

In The Matter Of:

THE FAIRCHILD CORPORATION vs. ALCOA CORPORATION

ARBITRATION
February 28, 2007

MERRILL LEGAL SOLUTIONS
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ARBITRATION - Vol. 8

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CPR INSTITUTE OF DISPUTE RESOLUTION

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In Re

THE FAIRCHILD CORPORATION,

Claimant,

-against-

ALCOA CORPORATION,

Respondent.

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Cravath, Swaine & Moore, LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York

February 28, 2007

9:15 a.m.

B E F O R E:

JAMES F. STAPLETON, Arbitrator

TAMMEY M. PASTOR, RPR, CLR, Hearing Reporter

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1 ROBERT SHOFSTALL - REDIRECT
 2 this is notice.
 3 A. Yes.
 4 Q. Turn back, I think you reference
 5 this on direct, but let's make sure we have it.
 6 Tab 7 second page. What do you understand this
 7 to be?
 8 A. I understand that to be the meeting
 9 minutes of, the minutes of the meeting with the
 10 DRIRE on 30 July 2003.
 11 Q. Sorry July 30, 2003?
 12 A. 30 July 2003.
 13 Q. That some months before the Phase
 14 II report we just looked at; right?
 15 A. Yes it is.
 16 Q. What kind of information -- do you
 17 read this to be minutes of a meeting in which
 18 Alcoa conveyed information to the DRIRE about
 19 the Montbrison facility and investigations going
 20 on there?
 21 A. The question did they convey
 22 information?
 23 Q. Yes. Is that what this is
 24 reflecting?
 25 A. Yes, it is.

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1 ROBERT SHOFSTALL - RECROSS
 2 the site." See that, Mr. Shofstall?
 3 A. Yes.
 4 Q. That indicate to you there had been
 5 proposals made?
 6 A. Absolutely, yes.
 7 MR. ZUROFSKY: I have not going
 8 further.
 9 THE ARBITRATOR: Thank you.
 10 We are not going to go over the same ground
 11 again; are we?
 12 MR. SLIFKIN: No, I just have two
 13 questions.
 14 RE-CROSS-EXAMINATION BY MR. SLIFKIN:
 15 Q. Mr. Shofstall, you see the two
 16 lower shelves of this bookcase, the binders with
 17 the blue labels?
 18 A. Yes.
 19 Q. Have you read those?
 20 A. Can I go see what they are?
 21 Q. Sure.
 22 A. I see correspondence,
 23 correspondence, correspondence, correspondence.
 24 So you're asking me if I read all the
 25 correspondence?

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1 ROBERT SHOFSTALL - REDIRECT
 2 Q. Is it also reflecting in your view
 3 an action, a plan to go forward? Look at, for
 4 example page 3 do you see there I know it is a
 5 terrible translation, but the second bullet
 6 point.
 7 A. The part we were talking about
 8 earlier --
 9 Q. Yes. Does that make any comments
 10 on the action plan proposed by the site? Do you
 11 see that there?
 12 A. Yes.
 13 MR. SLIFKIN: Sorry, where?
 14 MR. ZUROFSKY: Second bullet
 15 point.
 16 MR. SLIFKIN: On page 3?
 17 MR. ZUROFSKY: Page 3.
 18 Q. There are bullet point, fourth
 19 paragraph, second bullet point. English version
 20 of the second bullet point. I will read it for
 21 the sake of completion?
 22 "Mr. Gorse underlines, obviously it
 23 is a tricky translation is agreeable surprised
 24 by advancement studies carried out. It does not
 25 make any comments on the action plan proposed by

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1 SUSAN HALL - DIRECT
 2 Q. Yes. That is the correspondence,
 3 that is all correspondence from Alcoa to
 4 Fairchild. One way. Have you read that?
 5 A. I cannot represent to you that I
 6 read all the correspondence. I know I have read
 7 some correspondence that was provided to me.
 8 Q. Okay. Last question. Isn't it
 9 true, sir, that you don't have any experience
 10 post acquisition involving an indemnity
 11 provision?
 12 A. Post acquisition Indemnity
 13 Agreement? That would be correct, sir.
 14 MR. SLIFKIN: Thank you very much.
 15 THE ARBITRATOR: Thank you.
 16 You're excused.
 17 (Witness excused.)
 18 SUSAN HALL,
 19 having been first duly sworn by the Notary
 20 Public (Tammy M. Pastor), was examined and
 21 testified as follows:
 22 MR. ZUROFSKY: Your Honor, our
 23 next witness will be Ms. Hall.
 24 MR. SLIFKIN: If you may, your
 25 Honor, I will excuse myself but I will be back.

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1 SUSAN HALL - DIRECT
 2 DIRECT-EXAMINATION BY MR. ZUROFSKY:
 3 Q. Good afternoon, Ms. Hall.
 4 A. Good afternoon.
 5 Q. By whom are you currently
 6 employed --
 7 THE ARBITRATOR: Why don't you
 8 start with your full name.
 9 MR. ZUROFSKY: Fair enough.
 10 Q. Why don't you state your full name
 11 for the record.
 12 A. Susan L. Hall.
 13 Q. By whom are you currently employed?
 14 A. Fairchild Corporation.
 15 Q. In what capacity?
 16 A. I am the environmental counsel at
 17 the Fairchild Corporation.
 18 Q. How long have you been with the
 19 Fairchild Corporation?
 20 A. About two years and four, five
 21 months.
 22 Q. Roughly what, October 2004 around
 23 there?
 24 A. That's when I started, yes.
 25 Q. Do you have experience dealing with

1 SUSAN HALL - DIRECT
 2 Environmental Law?
 3 A. I do have experience.
 4 Q. Describe that experience.
 5 A. I was in private practice from
 6 1995 following a clerkship until. As both an
 7 associate and a partner in a private practice I
 8 dealt with, I represented clients against EPA
 9 actions, I was a member of PRP group. You know
 10 what that is, potentially responsibility party
 11 groups.

12 I have dealt with regulators.

13 Things of that nature.

14 Q. Does that include either in private
 15 practice or at your time at Fairchild work on
 16 Southern California environmental regulatory
 17 items?

18 A. Yes. Did you ask me what I do
 19 specifically at Fairchild or just my background?

20 Q. No, I am just asking if you have
 21 that background.

22 A. Yes.

23 Q. Do you have a background in OSHA
 24 compliance?

25 A. No, I don't.

1 SUSAN HALL - DIRECT
 2 Q. What are your current
 3 responsibilities at Fairchild?
 4 A. I am currently responsible for our
 5 environmental sites. We have sites that are
 6 undergoing remediation in a number of states,
 7 Massachusetts, Florida, Michigan, Wisconsin, and
 8 a number in Southern California. I supervise
 9 the remediation projects. I deal most directly
 10 with our environmental consultants.
 11 I have also had occasion to deal
 12 with the regulators in terms of our remediation
 13 approaches.
 14 Q. Do you also serve as Fairchild's
 15 designated representative with respect to the
 16 Alcoa relationship?
 17 A. I do.
 18 Q. On environmental matters.
 19 A. Yes, I do. I was designated -- I
 20 became the designated representative for
 21 Fairchild in, I think February of 2005.
 22 Q. Are you familiar with the
 23 environmental indemnification provisions of the
 24 Acquisition Agreement between the parties?
 25 A. Yes, I am somewhat familiar.

1 SUSAN HALL - DIRECT
 2 Sorry?
 3 A. I said I am somewhat familiar with
 4 them, yes.
 5 Q. Do you have an understanding of any
 6 rights Fairchild might have to participate in
 7 connection with actions taken by Alcoa?
 8 A. Yes, I do.
 9 Q. Describe that understanding for us,
 10 please.
 11 A. My understanding is that Fairchild
 12 has a number of rights to participate in terms
 13 of actions that Alcoa will either contemplate
 14 taking or may take.
 15 We have the right to be consulted
 16 on various things. We have the right to comment
 17 on proposed responses to environmental actions.
 18 Basically consistent with the good faith
 19 obligations that are implied in the contract we
 20 have an opportunity to essentially work with
 21 Alcoa and be heard.
 22 Q. Are those important rights to
 23 Fairchild?
 24 A. Yes, they are.
 25 Q. Why is that?

1 SUSAN HALL - DIRECT

2 A. Because if there is a potential or
 3 actual Fastener Environmental Liability for
 4 which Fairchild is going to have to indemnify
 5 Alcoa, we obviously want to be involved.

6 Q. Ms. Hall, in connection with your
 7 role as Fairchild's designated representative,
 8 have you had the opportunity to review all the
 9 correspondence between Alcoa and Fairchild
 10 related to the claims at issue in this case?

11 A. I can't say all, but I would
 12 certainly think that most all. I am not aware
 13 of anything that I haven't seen.

14 Q. You just don't want to swear you
 15 have seen everything that is out there?

16 A. Yes. When I look over here, it is
 17 somewhat daunting.

18 Q. Based upon your knowledge you have,
 19 Ms. Hall, has Alcoa honored Fairchild's
 20 participation rights in connection with the
 21 claims it is making here for indemnification?

22 A. Generally they have not.

23 Q. By generally what are you excepting
 24 from that answer? Let me come at it another
 25 way. We heard some testimony about this.

1 SUSAN HALL - DIRECT

2 This is a summary chart. There is
 3 a breakdown behind it?

4 THE ARBITRATOR: This is under
 5 tab?

6 MR. ZUROFSKY: 2 of Ms. Hall's
 7 binder.

8 Q. Ms. Hall, why don't we walk through
 9 this chart a little bit. What is this chart,
 10 just generally speaking before we get into the
 11 columns and rows, what does this information
 12 convey?

13 A. This is a chart that has three
 14 categories. On the broad picture it is claims
 15 that Alcoa has made in which they have failed to
 16 accord Fairchild the right to participate.

17 Q. Let's walk through, you said there
 18 is three categories. Is the first category the
 19 one on the left there the heading is Items For
 20 Which Alcoa Has Admitted Its Failure to Honor
 21 Fairchild's Participation Rights?

22 A. That's correct.

23 Q. What -- it is broken into two sub
 24 columns maybe take them in order. What is
 25 represented by this category?

1 SUSAN HALL - DIRECT

2 Prior to undertaking the Phase II's
 3 Alcoa met with Michael Hodge about the scopes of
 4 work. Are you aware of that?

5 A. Yes I am.

6 Q. In that sense would you say with
 7 respect to the Phase II's Alcoa honored
 8 Fairchild's, somewhat honored Fairchild
 9 participation rights?

10 A. Yes.

11 Q. Is there any other item you're
 12 aware of on which you can say Alcoa has honored
 13 Fairchild's participation rights?

14 A. No.

15 Q. Why do you say that?

16 A. Because the pattern that was
 17 established by the time I came on board was one
 18 where Alcoa was unilaterally taking the lead on
 19 activities related to environmental issues
 20 without including Fairchild in the process. Our
 21 participation rights were simply ignored.

22 Q. Just to introduce tab 2 of your
 23 binder there is Claimant's 455 there should be
 24 two demonstrative sites which we sent to the
 25 other side last night, your Honor.

1 SUSAN HALL - DIRECT

2 A. The first column that is captioned
 3 Chart Distributed At the Hearing, these are the
 4 items that Alcoa admitted at the first
 5 arbitration hearing that Fairchild had not been
 6 given any notice of.

7 The second chart which is captioned
 8 Correspondence From Alcoa consists of items that
 9 appeared in letters from John Lease to
 10 Fairchild. I think the dates of those letters
 11 were in July of 2005. And February of 2006. In
 12 which Mr. Lease had asterisked items that Alcoa
 13 admitted Fairchild had not been given notice of.

14 There is no overlap between these
 15 two.

16 Q. Go ahead. Sorry.

17 A. The items that are in the second
 18 column are distinct from the ones in the first
 19 column. So that you have a total that is in
 20 excess of 3.6 million.

21 Q. Let's look at the sub column, first
 22 sub column, the one that says Chart Distributed
 23 At the Hearing. Let's call it category 1A if
 24 you will.

25 A. Okay.

1 SUSAN HALL - DIRECT

2 Q. If you turn to tab 6 of your
 3 binder, is this the chart you were referring to
 4 that Alcoa handed out at the first week of the
 5 hearing?

6 A. Yes. That is the chart.

7 Q. The total there, if you turn to the
 8 pages are these the same items that are listed?

9 A. Yes. As you can see the total is
 10 \$2,115,831 which is exactly the amount on the
 11 first what we are calling column A.

12 Q. Let's look at column B. You
 13 mentioned Mr. Lease's letters. Are those the
 14 letters found behind tabs 3 and 4, first one
 15 being Alcoa arbitration C, bulk Exhibit C volume
 16 5 of 22. The second one being Alcoa Arbitration
 17 Exhibit C volume 7 of 22?

18 THE ARBITRATOR: Are they in the
 19 book?

20 MR. ZUROFSKY: They are in the
 21 book, your Honor, tabs 3 and 4.

22 A. Yes. Those are the letters that
 23 contain the items that were asterisked.

24 Q. You referred to asterisk, let's
 25 make sure we are on the same page. Tab 3, the

1 SUSAN HALL - DIRECT

2 first arbitration hearing that he admitted there
 3 were a couple of errors. And we did not include
 4 those.

5 Q. Those items?

6 A. In the second category.

7 Q. Column 1B?

8 A. There were two items.

9 Q. So, I think you testified, there is
 10 no overlap between 1A and 1B if an item is an
 11 asterisked one and appeared at the chart in the
 12 hearing you didn't count them both; right?

13 A. No. 1A and 1B represent Alcoa's
 14 admissions either at the arbitration hearing or
 15 in Mr. Lease's letters to Fairchild about items
 16 for which no notice had been given. There is no
 17 overlap.

18 Q. Let's talk about the second major
 19 column?

20 THE ARBITRATOR: Let me just look
 21 at the other letter here if I may. You're going
 22 back to tab 2.

23 MR. ZUROFSKY: Yes.

24 THE ARBITRATOR: I am following it
 25 in the book.

1 SUSAN HALL - DIRECT

2 first of those letters says "In connection with
 3 the mediation session scheduled for July 13,
 4 2005, these find enclosed a chart reflecting
 5 amounts spent by Alcoa through May 2005 for
 6 environmental liabilities. Some of the items on
 7 the charts identified with an asterisk or double
 8 asterisk have not been the subject of prior
 9 notice pursuant to section 11.6 of the
 10 Acquisition Agreement." Do you see that?

11 A. I do.

12 Q. When you said Mr. Leased admitted
 13 failure of notice --

14 THE ARBITRATOR: Are you reading
 15 from his letter?

16 MR. ZUROFSKY: Yes, I am, your
 17 Honor.

18 THE ARBITRATOR: This is the
 19 letter dated July 6, 2005?

20 MR. ZUROFSKY: Right. Same
 21 language appears in the next one, too that is
 22 the one I am looking at.

23 A. Yes. That is what I am referring
 24 to. I would just add the qualification I think
 25 there was some testimony by Mr. Lease in the

1 SUSAN HALL - DIRECT

2 MR. ZUROFSKY: Tab 2. Same chart.

3 I was going to move, your Honor, if it is all
 4 right with you, I was going to move to the
 5 second column.

6 Q. Ms. Hall, the third column over,
 7 second major heading Items For Which Alcoa
 8 Ignored Fairchild's Attempt to Participate. Do
 9 you see that, Ms. Hall?

10 A. I do.

11 Q. What is reflected in this column?

12 A. This column reflect items where
 13 Fairchild made it clear that it wanted to
 14 participate, that it wanted further information.
 15 Those requests for further information,
 16 consultation and opportunity to comment were
 17 disregarded. By way of example included in this
 18 column are what we have I think informally been
 19 referring to as the four gap letters. With
 20 respect to Fullerton, St. Cosme, Toulouse and
 21 Torrence.

22 Also the Phase II reports which
 23 Fairchild analyzed and asked that Alcoa provide
 24 us with any -- let me take that back. Fairchild
 25 asked to be included in any further

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1 SUSAN HALL - DIRECT
 2 investigations that were going to be follow ons
 3 or follow ups to the Phase IIs.
 4 Q. To the Phase IIs.
 5 A. Correct.
 6 Q. I think we have got your answer.
 7 Let's break it down. The first thing you
 8 mentioned were four gap analysis letters?
 9 A. Correct.
 10 Q. Then you mentioned cost that were
 11 included as follow-up investigations to the
 12 Phase IIs?
 13 A. Right.
 14 Q. Take the first category you
 15 mentioned the four gap analysis letters are
 16 those just for purpose of the record, are those
 17 letters found at tab 7 with respect to
 18 Fullerton, that is the first one?
 19 A. Yes.
 20 THE ARBITRATOR: Let me just look
 21 at this.
 22 Q. Sorry if I didn't get an answer I
 23 was just checking something.
 24 THE ARBITRATOR: I am trying to
 25 look at the material you are referencing.

1 SUSAN HALL - DIRECT
 2 12 with respect to St. Cosme.
 3 A. Yes, that's correct.
 4 Q. Then tab 16 with respect to
 5 Toulouse?
 6 A. Yes. Those are the four what Mr.
 7 Lease referred to as the gap letters.
 8 Q. These came pretty early on, right,
 9 these are first half of 2003?
 10 A. Yes. March of 2003. Then June of
 11 2003.
 12 Q. What was Fairchild's response to
 13 these gap letters?
 14 A. I believe Mr. Miller responded to
 15 those letters asking for more information.
 16 Those letters essentially had estimated costs
 17 for doing various things. And Mr. Miller wrote
 18 to Alcoa and asked for additional information
 19 and justification of these costs.
 20 For example, I noted at Exhibit 12
 21 for St. Cosme, Alcoa is estimating that it
 22 expect to incur over \$5 million in costs for six
 23 categories of items. Two of which they don't
 24 even know what the costs are going to be. I
 25 wasn't there at the time, of course, but if I

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1 SUSAN HALL - DIRECT
 2 MR. ZUROFSKY: Sorry, I was just
 3 making sure --
 4 THE ARBITRATOR: You are referring
 5 to gap analysis. What is the gap?
 6 MR. ZUROFSKY: The reason I think
 7 that phrase is being used that is what Mr. Lease
 8 referred to were the letters for the four
 9 facilities that had charts attached to them.
 10 THE ARBITRATOR: What does that
 11 stand for, gap?
 12 MR. ZUROFSKY: We can look at Mr.
 13 Lease's testimony. I think he meant gaps in
 14 compliance. I don't think it was an acronym. I
 15 am sure Mr. Chesler will correct me if I'm
 16 wrong.
 17 THE ARBITRATOR: I have 7. Go
 18 ahead.
 19 Q. Tab 7 with respect to Fullerton.
 20 A. Yes.
 21 Q. Then tab 10 with respect to
 22 Torrance.
 23 A. That's right.
 24 Q. These are all contained in Alcoa
 25 Arbitration Exhibit C volume 1 of 22. Then tab

1 SUSAN HALL - DIRECT
 2 were Mr. Miller, you're talking about \$5 million
 3 out of an \$8 million reserve, I would have been
 4 somewhat stunned and want additional
 5 information. Which is what he asked for.
 6 Q. Let's look at an example of that in
 7 tab 8, stick with Fullerton just for ease. This
 8 is Claimant's 92. Do you see that there,
 9 Ms. Hall?
 10 A. Yes.
 11 Q. Tab 8 of your book.
 12 A. Yes.
 13 Q. The last paragraph on the first
 14 page "Nevertheless, pursuant to section 11.7 of
 15 the Acquisition Agreement we are willing to
 16 discuss this matter further with you in order
 17 that we may do so effectively, please provide us
 18 with specific and complete background
 19 documentation supporting the items and estimated
 20 costs summarized in the table. Such
 21 documentation should include copies of any
 22 assessments, reports, legal analyses, cost
 23 analyses prepared by or for Alcoa and any other
 24 documentation which support the various findings
 25 as listed in the tables included with your

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<p style="text-align: right;">Page 2750</p> <p>1 SUSAN HALL - DIRECT 2 letter." Do you see that? 3 A. I see that. 4 Q. Is that the request you are 5 referring to Mr. Miller made? 6 A. That is what I am referring to. 7 Additionally he says we will respond once we get 8 further information. 9 Q. How did Alcoa respond to that 10 request? 11 A. I believe that one of the Alcoa 12 attorneys, Mr. Harvey wrote to Fairchild in 13 August, a couple months later, indicating that 14 as additional documentation and support for 15 those costs became available that they would be 16 provided to for example. And that we would be 17 kept apprised of what was going on. 18 Q. Is that the document found at tab 9 19 of your book, Claimant's Exhibit 429? 20 A. That is the letter I was referring 21 to. 22 Q. If you look at the second page of 23 that document? 24 A. On the second page he says at the 25 penultimate paragraph, "We will provide</p>	<p style="text-align: right;">Page 2752</p> <p>1 SUSAN HALL - DIRECT 2 Q. Those items are in there? 3 A. Yes. 4 Q. What else is mentioned in that 5 column. You mentioned follow on to Phase II, 6 let's talk about that -- before we go there I 7 don't want to go through all these items. It is 8 worth a couple of examples. 9 If you look at the Fullerton, back 10 to sort of tab 7 you see the chart attached to 11 Mr. Lease's letter. 12 A. Yes. 13 Q. There are estimates on the 14 right-hand side? 15 A. Yes. 16 Q. Turn to the second page that first 17 item there is machine guarding. Do you see 18 that? 19 A. Yes. \$58,000 is estimated for 20 machine guarding. 21 Q. Based on your review of the file, 22 did Fairchild ever receive any more information 23 about machine guarding at Fullerton before 24 getting the bill? 25 A. No.</p>
<p style="text-align: right;">Page 2751</p> <p>1 SUSAN HALL - DIRECT 2 Fairchild with further documentation to support 3 the estimates developed for the three 4 facilities. Documentation is being compiled for 5 each project and will consist of such items as 6 scopes of work, consultant proposals summary 7 reports and invoices. We will provide you with 8 this documentation in a timely manner once it is 9 complete for your review."</p> <p>10 Q. To your knowledge, Ms. Hall, did 11 Fairchild ever receive the documentation such as 12 consultant proposals, scopes of work or whatnot 13 before Alcoa went ahead and spent the money?</p> <p>14 A. I am not aware of any. I have not 15 seen any in my review of the file.</p> <p>16 Q. But Alcoa has tried to claim 17 reimbursement for the projects contained in the 18 four charts in these gap analysis; is that 19 right?</p> <p>20 A. Yes. That's right.</p> <p>21 Q. Is that part of what is reflected 22 in the summary chart at tab 2 is the second 23 significant column?</p> <p>24 A. That is exactly what is in column 25 2.</p>	<p style="text-align: right;">Page 2753</p> <p>1 SUSAN HALL - DIRECT 2 Q. How much has Alcoa to date claimed 3 for machine guarding at Fullerton, if you want 4 we have included at tab 5 of your book the 5 letter that we have been dealing with, the 6 latest claims letter we have been working off of 7 the last couple days, if that is helpful to you?</p> <p>8 A. I think machine guarding is at it 9 looks like it is item 42.</p> <p>10 THE ARBITRATOR: What tab are we 11 in?</p> <p>12 MR. ZUROFSKY: Tab 5, your Honor.</p> <p>13 Q. Tab 2 of 6?</p> <p>14 A. 2 of 6. It says item 42 machine 15 guarding compliance and it is adjusted total 16 through September is 1,032,289.</p> <p>17 THE ARBITRATOR: What item?</p> <p>18 THE WITNESS: Item 42.</p> <p>19 Q. Ms. Hall, were you here during the 20 testimony of John Lease during the first week of 21 the hearing?</p> <p>22 A. I was here for I think the bulk of 23 it.</p> <p>24 Q. Were you here when we put in front 25 of Mr. Lease the assessment for machine guarding</p>

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1 SUSAN HALL - DIRECT
 2 that was done at Fullerton with all the
 3 individual pages?
 4 A. I really don't recall.
 5 Q. Let's look at another one. That is
 6 at Fullerton. How about same site just for --
 7 see fall protection there, line two above
 8 machine guarding?
 9 A. Yes.
 10 Q. How much is the total cost on line
 11 item 40, I guess it is?
 12 A. The fall control program.
 13 Q. Yes.
 14 A. \$45,773 in the gap letter. And
 15 what is the line, please?
 16 Q. Line 40, I believe.
 17 A. Line 40. \$151,658.
 18 Q. Almost four times more; right?
 19 A. Correct.
 20 Q. Let's turn attention briefly to St.
 21 Cosme.

22 THE ARBITRATOR: Where was the
 23 other reference to the fall protection?

24 THE WITNESS: It is in Exhibit 5.
 25 THE ARBITRATOR: Tab 5.

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1 SUSAN HALL - DIRECT
 2 THE WITNESS: Tab 5, page 2 of 6.
 3 THE ARBITRATOR: I have that. You
 4 referred back to the estimate. Where is that?
 5 MR. ZUROFSKY: Tab 7, your Honor.
 6 On page, right below the machine guarding
 7 estimate for 58,000 is the next one.
 8 Q. Ms. Hall, we don't want to take up
 9 the time today --
 10 THE ARBITRATOR: I understand
 11 that. You made reference to it so I would like
 12 to see what you're referring to. You are
 13 referring to fall protection.
 14 MR. ZUROFSKY: Yes.
 15 THE ARBITRATOR: That is the
 16 second item on page 0041?
 17 MR. ZUROFSKY: Yes, your Honor.
 18 A. 45,000.
 19 Q. All I was suggesting, Ms. Hall, I
 20 was going to ask you a more general question.
 21 In general as you have been able to compare them
 22 up overstated estimates that are understating
 23 what the eventual costs were?
 24 A. Yes. There were a number of
 25 discrepancies.

1 SUSAN HALL - DIRECT
 2 Q. I think you pointed out for the St.
 3 Cosme facility sort of skipping around just a
 4 little bit, tab 14, the second page of tab 14,
 5 similar chart; right, Ms. Hall?
 6 A. Yes.
 7 Q. You pointed out, I believe, for two
 8 of the items, again machine guarding in this
 9 case and fall control there is no estimate at
 10 all?
 11 A. Right.
 12 Q. Do you know how much was spent on
 13 those items at the St. Cosme facility?
 14 A. Let's see, I'm looking at it. Fall
 15 control compliance has a cost of \$37,857.
 16 Q. How about machine guarding, I think
 17 there is actually more than one reference to
 18 machine guarding?
 19 A. Machine guarding, well there is one
 20 entry for 3300. But I know there is a larger
 21 one than that.
 22 Q. How about line 90.
 23 A. Line 90. Yes line 90 machine
 24 guarding, \$625,142.
 25 Q. Again, I don't want to belabor the

1 SUSAN HALL - DIRECT
 2 point and go through all of them, just give some
 3 examples.
 4 You were talking before we went to
 5 a couple of those examples, I think you were
 6 about to discuss the other items in category 2
 7 which I think you testified earlier follow on
 8 investigations to Phase IIs?
 9 A. Yes, that is what I said.
 10 Q. What else is in -- why are those
 11 items in category 2?
 12 A. Well --
 13 THE ARBITRATOR: When you say
 14 category 2?
 15 MR. ZUROFSKY: I am referring to
 16 the broad category, third column over.
 17 THE ARBITRATOR: Items for which
 18 Alcoa ignored Fairchild's attempts?
 19 MR. ZUROFSKY: Yes.
 20 THE ARBITRATOR: They are not
 21 numbered columns.
 22 MR. ZUROFSKY: Right.
 23 THE ARBITRATOR: Third column of
 24 numbers.
 25 MR. ZUROFSKY: Right.

60 (Pages 2754 to 2757)

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1 SUSAN HALL - DIRECT
 2 A. Right. The other numbers in that
 3 column represent follow on, follow-up
 4 investigations that Alcoa did in the furtherance
 5 of their Phase II reports. And Fairchild had
 6 made a specific request of Mr. Ernesto Beckford,
 7 had specifically requested two things. More
 8 information about these Phase IIs. And,
 9 secondly, that Fairchild's designated
 10 representative be consulted with respect to any
 11 further investigative activities.

12 Q. I believe -- let's take a look at
 13 that letter. Is that the letter, Ms. Hall found
 14 at tab 18 of your binder, Claimant's Exhibit 2,
 15 co-Exhibit 2.

16 A. Yes.

17 Q. Tab 18.

18 A. That is the letter I was referring
 19 to.

20 Q. Let me draw your attention to page
 21 marked FC 299. Do you see that there?

22 A. Yes.

23 Q. Under 9A under Torrance facility on
 24 that chart, do you see that?

25 A. Yes.

1 SUSAN HALL - DIRECT

2 Q. It says at the end of those
 3 comments, "The source of this impact is not
 4 entirely clear Alcoa's assessment however it
 5 presents an issue which should be followed up."

6 Do you see that, Ms. Hall?

7 A. With respect to Torrance, yes, that
 8 is what it says.

9 Q. These were Fairchild's comments on
 10 the Phase II reports that were provided to them
 11 by Alcoa?

12 A. Yes. It's my understanding. I
 13 wasn't there at the time. But that is my
 14 understanding what this is about.

15 Q. If you look back to Mr. Beckford's
 16 cover letter, he made reference to a request to
 17 be consulted on follow up investigations.

18 A. That's exactly what he asks.

19 Q. Is that page FC 296?

20 A. Yes.

21 Q. Which part are you referring to?

22 A. He indicates that on the sites, I'm
 23 quoting "As to those sites to which we agree
 24 there should be further investigation, please
 25 ensure that the actual investigative measures

1 SUSAN HALL - DIRECT
 2 are first discussed with our designated
 3 representative (Michael Hodge) as required by
 4 section 11.6C of the Acquisition Agreement."

5 Q. Irrespective of whether or not Mr.
 6 Beckford had made that request, do you see the
 7 reference there to as required by section 11.6C,
 8 is it your understanding of the contract that
 9 Alcoa would have, in any event, be required to
 10 discuss with Fairchild before taking those
 11 measures, even if Mr. Beckford hadn't made this
 12 request?

13 A. That's my reading of the contract.
 14 That Alcoa must discuss and confer and consult
 15 with Fairchild on anything that might be or is a
 16 Fasteners environmental liability.

17 Q. So did Alcoa consult and discuss
 18 with Fairchild about the follow on
 19 investigations of the Phase II before doing
 20 them?

21 A. No, they did not. That's what the
 22 second column represents. The costs that they
 23 incurred for investigations for which Fairchild
 24 was accorded no participation rights.

25 Q. Let's look at some examples. The

1 SUSAN HALL - DIRECT

2 first is on tab 19 which is marked as Alcoa
 3 arbitration C, volume 2 through 4 of 22.

4 A. I see that.

5 Q. This is the cover letter here.

6 There was also significant amount of reports
 7 included with this, or as attachments to this,
 8 right, Ms. Hall? Just looking at the first line.

9 A. When you are referring to the list
 10 that is attached?

11 Q. No. We will get to the list in a
 12 second. I am just looking at the first line
 13 just to make a point.

14 A. Okay.

15 Q. "Enclosed for your information is
 16 reports." In other words, what we have
 17 excerpted here is just the cover letter not all
 18 the reports that came with it?

19 A. Yes.

20 Q. Is this the next communication from
 21 Alcoa to Fairchild regarding investigation at
 22 the facilities?

23 A. Yes.

24 Q. It is dated almost a year after Mr.
 25 Beckford's letter. Let me ask you a question:

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1 SUSAN HALL - DIRECT

2 Did you review this correspondence when it came
3 in, you were on board at this time?

4 A. Yes, I did.

5 Q. What did you understand this
6 correspondence to be representing?

7 A. Can I take minute to look at it?

8 Q. Sure. Of course?

9 A. This is essentially Alcoa advising
10 us of the results of their follow on
11 investigations that they had done.12 Q. In other words, the investigations
13 were done at this point?

14 A. The investigations were done.

15 Q. That is why the reports were
16 attached they were done.

17 A. Right.

18 Q. You see where it says at the bottom
19 of that first page, second to last paragraph
20 "The costs" see that there?

21 A. Yes.

22 Q. "The costs that have been incurred
23 by Alcoa for remedial projects at the former
24 Fairchild Fasteners facilities in Los Angeles,
25 total \$1,073,208 through October 2004."

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1 SUSAN HALL - DIRECT

2 A. Yes, I see that.

3 THE ARBITRATOR: Where is that?

4 MR. ZUROFSKY: Sorry, your Honor.

5 Fourth paragraph down in the letter. The one
6 that begins "The costs that have been."

7 THE ARBITRATOR: Yes, I see it.

8 Q. Is that the same number, Ms. Hall,
9 if you turn two pages forward there is a chart,
10 a table attached to the letter?

11 A. Yes.

12 Q. Same number \$1,073,000?

13 A. Yes.

14 Q. That is how much Alcoa was claiming
15 is applicable under the Indemnification
16 Agreement in connection with this letter?17 A. Yes, this sum I understand to
18 represent the costs associated with doing
19 follow-up, follow on work, characterization,
20 investigations emanating from Phase II's.21 Q. In response to Mr. Beckford's
22 letter we looked at minute ago, did Alcoa ever
23 say to you we are going to go forward with the
24 following investigations?

25 A. Not to my knowledge.

1 SUSAN HALL - DIRECT

2 Q. None of the investigations listed
3 on this chart?4 A. No. I have not seen any evidence
5 of that in the records.6 Q. One of the items I want to points
7 you to, you see in that chart attach to the
8 letter, under the site Temple Avenue, City of
9 Industry?

10 A. Yes.

11 Q. There is some references including
12 one that is six down, to groundwater
13 remediation.

14 A. I see that.

15 Q. At the time of the acquisition --

16 THE ARBITRATOR: What page are you
17 on?18 MR. ZUROFSKY: Sorry, your Honor.
19 Third page of tab 19 there is a chart.

20 THE ARBITRATOR: One page chart.

21 MR. ZUROFSKY: Yes. Table I, I
22 think is what it is.

23 THE ARBITRATOR: I have it.

24 Q. Under Temple Avenue, six entries
25 down it says "groundwater remediation."

1 SUSAN HALL - DIRECT
 2 A. Under which item?
 3 Q. Sorry. Under groundwater
 4 remediation. That same line we were looking at.
 5 A. Uh-huh.
 6 Q. Two columns over there is two
 7 entries, 48,300-Mission, 82,000-EnviroSolve.
 8 A. Exactly.
 9 Q. Was EnviroSolve Fairchild's
 10 consultant?
 11 A. Yes. EnviroSolve was and in fact
 12 still is Fairchild's consultants it was
 13 Fairchild's consultant on Temple Avenue it still
 14 is our consultant on other sites we have in
 15 California.
 16 Q. To your knowledge had Alcoa told
 17 Fairchild EnviroSolve was going to continue to
 18 be the consultant on Temple Avenue project?
 19 A. I think I have seen something to
 20 that effect.
 21 Q. You see the other entry is
 22 reference to Mission; do you see that?
 23 A. Yes.
 24 Q. Do you understand who this is?
 25 A. I do now. Mission Geoscience was

1 SUSAN HALL - DIRECT
 2 response, this is Alcoa arbitration 103. Page
 3 FC 341?
 4 A. I'm there.
 5 Q. Do you see that?
 6 A. Yes.
 7 Q. The third full paragraph, the one
 8 beginning "similarly?"
 9 A. I see that.
 10 Q. I want to look four lines down.
 11 A. The one beginning "The only
 12 expenses?"
 13 Q. Right. "The only expenses that
 14 might have been legitimate Fastener
 15 Environmental Liabilities are the groundwater
 16 remediation costs associated with the Temple
 17 Avenue facility." Do you see that?
 18 A. I do.
 19 Q. "By reference to table 1 attached
 20 to your letter these remediation costs total
 21 \$130,000." Do you see that Ms. Hall?
 22 A. I do.
 23 Q. Is the reference there to the fact
 24 they might have been legitimate Fastener
 25 Environmental Liabilities reference to the fact

1 SUSAN HALL - DIRECT
 2 apparently retained by Alcoa to replace
 3 EnviroSolve.
 4 Q. Had Alcoa provided to your
 5 knowledge Fairchild with any advance notice of
 6 that fact?
 7 A. No.
 8 Q. It is your understanding under the
 9 agreement that is information that Alcoa needed
 10 to communicate to Fairchild?
 11 A. My reading of the contract says
 12 that Alcoa's selection of environmental
 13 consultant has to be reasonably acceptable to
 14 Fairchild. But we were not told that they had
 15 changed to Mission Geoscience, nor given an
 16 opportunity to express our opinions on that.
 17 Q. You responded to this letter,
 18 right, this January 25 letter?
 19 A. I am sure I did.
 20 Q. Turn to tab 20 the next tab in your
 21 book. I will ask you is this your response?
 22 A. Yes, this is my response.
 23 Q. Okay I want to spend some time
 24 going over this response. I want to for now
 25 point to one item. On the third page of this

1 SUSAN HALL - DIRECT
 2 that Fairchild had been operating the pump and
 3 treat system on groundwater remediation before
 4 the acquisition?
 5 A. Yes.
 6 Q. You go on to say "However, since
 7 Alcoa refused to honor its obligation to consult
 8 under sections 11.6C provide prompt notice,
 9 these expenses are challenged as well."
 10 A. That is what it says.
 11 Q. What are you referring to there
 12 when you say Alcoa's refusal to honor its
 13 obligation?
 14 A. There is a pump and treat system
 15 operating when the site was acquired by Alcoa.
 16 They obviously changed consultants. You know
 17 what arose out of the change of consultants, we
 18 don't know whether they changed their approach
 19 to the pump and treat. There was just no --
 20 complete absence of information.
 21 Q. If you go back to the chart that
 22 you're referring to, table I in Mr. Lease's
 23 letter, which is in the tab right before, the
 24 first item there is remediation transition
 25 management. Do you see that?

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1 SUSAN HALL - DIRECT

2 A. Yes.

3 Q. Did you know what that referred to?
4 A. Well, I don't know exactly. I can
5 guess. It probably means they transferred the
6 remedial action to Mission Geoscience. But all
7 I am looking at are these bare words, we were
8 not informed of anything other than what is on
9 this chart.10 THE ARBITRATOR: That is what
11 happens you hire a new law firm, they read all
12 the letters of the old firm.13 MR. ZUROFSKY: Like the dentist,
14 the guy tells you the guy before was terrible
15 and you have to redo it.

16 Q. Let's go back to your response.

17 You discuss some of the other facilities. On
18 page 3, still that page we were just looking at.
19 I had pointed your attention to the paragraph
20 about Temple Avenue, Ms. Hall.

21 A. Third full paragraph?

22 Q. Yes. FC 341.

23 A. Yes.

24 Q. We looked at the last sort of half
25 of that. I want to now move up to the top half

1 SUSAN HALL - DIRECT

2 Kaynar. Kaynar retained SCS Engineers. SCS
3 Engineers conducted a complete assessment of the
4 site, I think they issued something like four
5 reports.6 They had prepared a remedial action
7 plan that had been submitted to the regulators.
8 And I believe it recommended, although I'd have
9 to look at the actual documents, I believe that
10 a soil vapor extraction system was recommended.
11 And that Mission Geoscience essentially redid
12 all that work. And its conclusions, based on my
13 statement here that nothing that was reported by
14 Mission Geoscience is fresh, I assume without
15 having it in front of me that they concluded the
16 same as had been previously concluded in the
17 prior assessments.18 Q. You are aware, are you not, SCS did
19 not actually test the groundwater at Fullerton
20 during its investigations, does that sound right
21 to you?

22 A. I believe that's true, yes.

23 Q. Do you understand Mission
24 Geoscience did in fact test the groundwater?

25 A. Yes.

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1 SUSAN HALL - DIRECT

2 of that in which you write "Similarly, the
3 Temple Avenue site was fully characterized prior
4 to closing and was undergoing remediation at the
5 time of sale."6 What are you referring to there,
7 Ms. Hall?8 A. I'm referring to the fact that
9 prior to Fairchild's acquisition of the site it
10 had been characterized by environmental
11 consultant and a pump and treat and soil vapor
12 extraction system were operational the site has
13 been assessed there is a remedy in place.14 Q. You were responding to the claim
15 for indemnification for further investigation?

16 A. Correct.

17 Q. Let's talk about the Fullerton
18 facility, next paragraph down. It says
19 "Likewise, the Fullerton facility had been fully
20 characterized by June 2002."21 What are you referring to there,
22 Ms. Hall?23 A. Well, the Fullerton facility was
24 only acquired by Fairchild in 1999. It was
25 owned prior to that by an operation called

1 SUSAN HALL - DIRECT

2 Q. But why do you then say there is
3 nothing new or fresh or whatever it was you
4 referred to; do you recall?5 A. Well, as I recall SCS had done very
6 extensive investigation of the soil. I think
7 they had done something like 125 or 26 soil
8 borings to find out the depth and extent of the
9 contamination.10 They went down to approximately 80
11 feet below ground surface. And after 80 feet
12 there were no more hits. And the groundwater
13 level at that site is at approximately 130 feet
14 below ground surface.15 They also did very extensive
16 modeling. They did very extensive conservative
17 modeling. So what they did, based on a worst
18 case scenario, in other words, contamination
19 directly into the ground, whereas in this site
20 you had asphalt and you had concrete floor, so
21 obviously that would make intrusions into the
22 ground less likely.23 Taking all that away, they did this
24 modeling, this very conservative modeling that
25 the conclusion of which the VOCs that were in

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1 SUSAN HALL - DIRECT
 2 the soil, the probability of their ever reaching
 3 groundwater was extremely remote.
 4 Q. That would be VOCs that were coming
 5 from the soil below the plant?
 6 A. That's correct.
 7 Q. But Mission did find contamination
 8 in the groundwater when they tested it at
 9 Fullerton; correct?
 10 A. I believe they did. If my memory
 11 serves me, what they did, actually I would have
 12 to see the report.
 13 Q. Is Fullerton in an area that has
 14 regional contamination, Ms. Hall?
 15 A. Yes. There is a huge area of
 16 contamination in Southern California in the LA
 17 area. Mostly emanating around the San Gabriel
 18 Valley water basin.
 19 Q. So does that fact refresh your
 20 recollection as to what Mission concluded with
 21 respect to the groundwater?
 22 A. I believe that Mission's ultimate
 23 conclusion the contamination hits that were in
 24 the groundwater were result of a regional
 25 problem.

1 SUSAN HALL - DIRECT
 2 Q. Next item -- is that why you said
 3 here it was fully characterized by June 2002?
 4 A. Yes.
 5 Q. Next item says "Finally the
 6 Torrance facility." Okay?
 7 A. Yes.
 8 Q. I want to draw your eye to the last
 9 line, last sentence of the paragraph, second to
 10 last sentence "In any event."
 11 A. Yes.
 12 Q. "In any event, all of the
 13 assessments for this site like all the other
 14 assessments and characterizations --"
 15 THE ARBITRATOR: Which paragraph?
 16 MR. ZUROFSKY: Sorry, "Finally the
 17 Torrance facility," the last paragraph on that
 18 page.
 19 THE ARBITRATOR: Yes.
 20 Q. About four lines down "In any event
 21 all of the assessments for this site, like all
 22 of the other assessments and characterizations
 23 are not Fastener Environmental Liabilities."
 24 Do you see that, Ms. Hall?
 25 A. I do.

1 SUSAN HALL - DIRECT
 2 Q. You write "Unless and until
 3 Remedial Action commences there is no basis for
 4 a claim under section 11.6." Do you see that?
 5 A. Yes.
 6 Q. You are using the defined term
 7 Remedial Action?
 8 A. Yes.
 9 Q. The capitalized term?
 10 A. Yes.
 11 Q. You mean there to refer to the
 12 defined term in the agreement?
 13 A. Yes.
 14 Q. Why do you say "unless and until
 15 remedial action commences there is no basis for
 16 a claim under section 11.6?"
 17 A. Because that is what the contract
 18 requires, if you have environmental
 19 contamination at a site, there are no
 20 indemnification obligations that arise until you
 21 have got a Remedial Action. You need a
 22 regulatory driver.
 23 Q. Why do you say that these
 24 assessments are not Remedial Actions as defined
 25 term in the agreement, if you recall?

1 SUSAN HALL - DIRECT
 2 A. Because they aren't being required
 3 by regulators. They are being voluntarily
 4 undertaken to assess the situation at the site.
 5 Q. Two other items on this letter.
 6 The next page at the top there you wrote "And
 7 lastly, as you should know." Do you see that
 8 there, Ms. Hall?
 9 A. Yes.
 10 Q. "Lastly as you should know section
 11 11.6C requires Alcoa to consult with and provide
 12 information to Fairchild with respect to
 13 Fastener Environmental Liabilities. Section
 14 11.6D requires prompt written notice of matters
 15 which may give rise to indemnification
 16 obligation."
 17 THE ARBITRATOR: What paragraph
 18 are you on?
 19 MR. ZUROFSKY: Sorry, top of the
 20 page Bates stamped FC 342, your Honor.
 21 THE ARBITRATOR: All right.
 22 Q. Right before the signature on this
 23 letter. Then you write "No information was
 24 imparted, no consultation was sought and no
 25 prompt notice was given with respect to any of

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1 SUSAN HALL - DIRECT
 2 the expenses incurred and actions undertaken at
 3 Alcoa on the matters under review."
 4 Do you see that, Ms. Hall?
 5 A. Yes, I do.
 6 Q. Is that response to the fact as we
 7 saw in Mr. Lease's letter the work had been done
 8 before the information had been sent to you?
 9 A. That's right.
 10 Q. Are the costs as you understand the
 11 million dollars or so we saw in your chart is
 12 that included in the category Alcoa ignored
 13 Fairchild for attempts to participate?
 14 A. That's right.
 15 Q. Sticking with this letter, just one
 16 more item on a separate item, on FC 340.
 17 A. Yes.
 18 Q. See at the bottom last paragraph
 19 beginning in short.
 20 A. Yes.
 21 Q. You write there "In short, Alcoa
 22 can commission all the environmental assessments
 23 it wishes. Such assessments, be they
 24 environmental, workplace health and safety or
 25 OSHA, are not Fastener Environmental

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1 SUSAN HALL - DIRECT
 2 Fastener Environmental Condition that in any way
 3 implicates an Environmental Law.
 4 Q. Are you referring again to the
 5 Remedial Action discussion we had just minute
 6 ago as well?
 7 A. Yes. In part.
 8 Q. So, the letter we saw from Mr.
 9 Lease that was at tab 19 respected the U.S.
 10 California facilities; is that right, Ms. Hall?
 11 A. The lease letter at 19 is Fullerton
 12 and Torrance. The attachment has two others.
 13 Q. Those are all in the United States?
 14 A. Yes.
 15 Q. Is it your understanding did Alcoa
 16 also do follow-up investigations to the Phase
 17 IIs at European facilities as well?
 18 A. Yes, they did, I believe.
 19 Q. Do you recall which facilities, we
 20 don't have to do a whole laundry list.
 21 A. Where they did follow-up to Phase
 22 IIs?
 23 Q. Yes.
 24 A. I think they did follow-up to Phase
 25 IIs at Montbrison, St. Cosme, Toulouse and maybe

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1 SUSAN HALL - DIRECT
 2 Liabilities." Do you see that?
 3 A. I do.
 4 Q. Then there is a footnote?
 5 A. Yes.
 6 Q. I want to talk about that footnote.
 7 First for a second, do you recall Mr. Beckford's
 8 letter that we looked at in which he, the
 9 response to the Phase II investigations with the
 10 chart?
 11 A. Yes.
 12 Q. Do you understand in that letter
 13 Mr. Beckford indicated to Alcoa that certain
 14 portions in his view the Phase IIs might be
 15 subject to reimbursement under certain
 16 situations?
 17 A. That is what his letter said.
 18 Q. Did you agree with Mr. Beckford's
 19 position when you looked at the contract?
 20 A. No, I did not.
 21 Q. Why not?
 22 A. Because I did not in my reading of
 23 the contract, assessments, Phase II assessments
 24 do not satisfy the definition of a Fastener
 25 Environmental Liabilities because there is no

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1 SUSAN HALL - DIRECT
 2 Vougy. Did you say European or French.
 3 Q. I said European. You just gave us
 4 the French?
 5 A. I think there were two in Germany I
 6 can't pronounce.
 7 Q. Kelkheim and Hildesheim. Is that
 8 right? Does that sound right?
 9 A. Yes. That sounds right.
 10 Q. Let me ask it this way: Have you
 11 seen anything or do you have any information to
 12 suggest Alcoa, per Mr. Beckford's letter and his
 13 request, consulted with Fairchild before
 14 undertaking those investigations?
 15 A. No, I have not seen anything that
 16 would suggest that they consulted with us.
 17 Q. Let's turn to tab 21 of your
 18 binder. Look at some of these examples. Do you
 19 see that there, Ms. Hall?
 20 A. Yes.
 21 Q. This is a letter to Mr. Beckford
 22 from Mr. Lease, you had just become the
 23 designated representative at this time; right?
 24 A. Right around this time, yes.
 25 Q. You read this when it came in?

66 (Pages 2778 to 2781)

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<p style="text-align: right;">Page 2782</p> <p>1 SUSAN HALL - DIRECT 2 A. Yes, I did. 3 Q. Here Mr. Lease is referring to 4 remedial investigations at the Montbrison 5 facility. Do you see that? 6 A. I do. 7 THE ARBITRATOR: What tab are you 8 on? 9 MR. ZUROFSKY: Tab 21, your Honor. 10 THE ARBITRATOR: Thank you. 11 Q. Ms. Hall, what is this letter? How 12 did you understand this letter when you read it? 13 A. Just give me minute to look at it. 14 This is Alcoa advising Fairchild it has 15 undertaken in follow-up to Phase II assessments 16 additional -- a simplified risk assessment and 17 they refer to a scope of work and estimated 18 proposal for a detailed risk assessment. A 19 letter from Alcoa to the French authorities and 20 invoices. 21 Q. Let's break that down. There are 22 invoices attached to this letter; correct? 23 A. They are not attached to this 24 exhibit. 25 Q. Not this exhibit.</p>	<p style="text-align: right;">Page 2784</p> <p>1 SUSAN HALL - DIRECT 2 risk assessment study' on the face of it the 3 investigation is a cost and scope of work 4 proposal, the latter being the operative word. 5 Not so, on page 2 ERM states in two separate 6 places that the detailed risk assessment has 7 been conducted since April 2004." 8 Do you see that, Ms. Hall? 9 A. Yes, I do. 10 Q. Does that refresh your recollection 11 when you reviewed these documents the claims 12 that were submitted you understood the claims to 13 be submitted related to both simplified risk 14 assessment and work on the detailed risk 15 assessment? 16 A. Yes. I misunderstood your original 17 question. 18 Q. That's fine. Just to tie that up, 19 the chart at tab 5, remember this is sort of our 20 master claim chart, Montbrison is on page 4 of 21 6? 22 A. Which item? 23 Q. Sorry, tab 5, the December 19 chart 24 that has all the expenses. Do you see that 25 there?</p>
<p style="text-align: right;">Page 2783</p> <p>1 SUSAN HALL - DIRECT 2 A. I assume they were attached to the 3 original. 4 Q. Do you see reference there at the 5 bottom of the first page to cost incurred to 6 date at the Montbrison facility for this work 7 totaled \$208,000? 8 A. Yes. 9 Q. Did you understand when you 10 reviewed those documents those costs were 11 incurred related to both simplified risk 12 assessment that had been finished and work on 13 the detailed risk assessment? 14 THE ARBITRATOR: Work under? 15 MR. ZUROFSKY: Detailed risk 16 assessment. The second step. 17 A. I would assume but I don't know for 18 sure based on this letter. 19 Q. Let's look at your response, which 20 I believe is at tab 22, Claimant's 456. 21 A. Yes. 22 Q. See there on the second page at the 23 top, third line down "Your letter describes the 24 investigation as 'the ERM scope of work and cost 25 estimate proposal for carrying out the detailed</p>	<p style="text-align: right;">Page 2785</p> <p>1 SUSAN HALL - DIRECT 2 A. What page? 3 Q. Page 4 of 6. 4 A. Yes. 5 Q. If you look on line 145 the 6 simplified risk assessment is listed as -- 7 A. 15,735. 8 Q. If you go to the bottom the 9 detailed risk assessment. 10 A. 287,704. 11 Q. Coming back to tab 21, again I will 12 ask, is it your understanding this covers both 13 the simplified risk assessment and work on 14 detailed risk assessment, work on both those? 15 A. Yes. 16 Q. It says here, as we discussed, it 17 was a scope of work. Did you comment on the 18 scope of work that was provided in terms of 19 giving substantive technical comments on that 20 scope of work, Ms. Hall? 21 A. No, I did not. 22 Q. Why not? 23 A. Because my understanding is the 24 detailed risk assessment was already underway. 25 In fact given the timing here, was probably</p>

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1 SUSAN HALL - DIRECT

2 almost complete, because I think my letter
 3 refers to the fact that -- I need to look at it
 4 at tab 22 -- that the detailed risk assessment
 5 had been conducted since April 2004.

6 Q. Did you understand Mr. Lease's
 7 letter to be a notice of proposed response
 8 asking you to comment?

9 A. No. He was not asking me to
 10 comment.

11 Q. What did you understand him to be
 12 saying?

13 A. I understood him to be saying that
 14 we've done this, this is a claim. Not that
 15 we're asking you for any input.

16 Q. The Toulouse facility which is at
 17 tab 23 of your binder, Claimant's 457. Again,
 18 Ms. Hall, we don't have to go through the whole
 19 back and forth on this, is this again another
 20 letter where Alcoa is asking for payment for
 21 work already done?

22 A. Yes.

23 Q. Was Fairchild to your knowledge
 24 consulted or notified that that work was going
 25 to be done before the costs were started to be

1 SUSAN HALL - DIRECT
 2 those the expenses in the titled column Items
 3 For Which Alcoa Ignored Fairchild's Attempts to
 4 Participate?

5 A. Yes, those are the follow on
 6 investigations.

7 THE ARBITRATOR: Those in that
 8 column 3, those include remedial work as well as
 9 investigative costs, do they not?

10 MR. ZUROFSKY: I think, I will ask
 11 the witness, I think we discussed earlier the
 12 remedial work is the work at the City of
 13 Industry facility.

14 THE WITNESS: Right.

15 THE ARBITRATOR: What about St.
 16 Cosme?

17 MR. ZUROFSKY: I will ask the
 18 witness.

19 Q. Are you aware of any remedial work
 20 done at St. Cosme other than investigations,
 21 Ms. Hall?

22 A. No. The only remedial work of
 23 which I'm aware, let me say I'm aware at the
 24 time of that letter was the pump and treat
 25 system at Temple Avenue. I don't believe there

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2 incurred?

3 A. I don't think so. But if you look
 4 at my letter.

5 Q. Which is 458, the next tab; is that
 6 right?

7 A. Yes.

8 Q. Let's go there.

9 A. I forgot what the question was.

10 Q. Let's go back. Did you understand
 11 Mr. Lease's letter to be a claim for work
 12 already either underway or completed?

13 A. Yes. Absolutely.

14 Q. How about at St. Cosme, tab 25
 15 which is Alcoa arbitration bulk C volume 6 of
 16 22. Same thing?

17 A. Work that's already completed or
 18 underway for which we had no opportunity to
 19 comment.

20 Q. Those are the French facilities you
 21 mentioned before; right?

22 A. St. Cosme, Toulouse, Montbrison.

23 Q. Are those the expenses that are in
 24 the category titled, in addition to the gap
 25 analysis expenses we talked about earlier, are

1 SUSAN HALL - DIRECT
 2 remediation underway.

3 THE ARBITRATOR: At St. Cosme?

4 MR. ZUROFSKY: Perhaps I should
 5 clarify, your Honor, what the definition of
 6 remediation is. Why it is 5 million.

7 THE ARBITRATOR: It is 4.4
 8 million.

9 MR. ZUROFSKY: I think the term
 10 remediation is being used here to talk about
 11 cleaning up soil and things in the ground and in
 12 the groundwater.

13 THE ARBITRATOR: This includes the
 14 degreaser, it includes a lot of other things.

15 MR. ZUROFSKY: Includes all the
 16 other things on this gap analysis chart. This
 17 includes, as Ms. Hall testified, includes
 18 investigations there is only one remediation but
 19 also those gap analysis charts, the four charts
 20 we looked at because of the correspondence.

21 Q. Let's turn to the last column here,
 22 Ms. Hall.

23 A. Yes.

24 Q. You mentioned the work going on at
 25 the City of Industry facility. Is it your

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1 SUSAN HALL - DIRECT
 2 understanding that following the January 25th
 3 letter, the chart we saw from Mr. Lease's
 4 letter, that Alcoa did further investigations at
 5 the City of Industry facility?

6 A. Yes.

7 Q. If you turn to tab 28 which is
 8 Claimant's 461, is this a letter with respect to
 9 some of that work?

10 A. Yes.

11 Q. Perhaps I should have paused before
 12 asking you about this letter. Just ask you
 13 describe what is in that last category, what
 14 type of items are in there?

15 A. The items in the last category
 16 consist of incidents where Fairchild received a
 17 bill or was not given any opportunity to
 18 participate in what was going on. It was mostly
 19 we were receiving after the fact notice of
 20 efforts that had been undertaken or just a bill.

21 Q. So let's make sure we all
 22 understand what is in each of these sort of
 23 categories. The broad category 1 are items
 24 listed on those charts we saw from Alcoa and
 25 from Mr. Lease; right, that is items they

1 SUSAN HALL - DIRECT
 2 Q. If you look at tab 29, claim's 462,
 3 this appears to be your response to this letter.

4 A. Yes it is.

5 Q. In responding to the letter did you
 6 offer any -- first let me ask you this: What
 7 was your response to Mr. Lease's submission of
 8 the work plans for the further work at Temple
 9 Avenue?

10 A. Give me minute just to look at
 11 them. Okay?

12 Q. Of course.

13 A. My response to Mr. Lease's letter
 14 about the work plans for City of Industry were
 15 that they were not Fastener Environmental
 16 Liabilities.

17 Q. That was one response. We can talk
 18 about that.

19 A. Yes.

20 Q. Did you also respond if you look on
 21 the second page that lastly section 11.6C
 22 requires Alcoa to consult with and so on.

23 A. Yes.

24 Q. Is that another reason why you
 25 thought those were inappropriate expenses?

1 SUSAN HALL - DIRECT
 2 indicated they didn't give prior notice of;
 3 right?

4 A. That is what the first two are.

5 Q. The category we were just looking
 6 at is areas, I think you testified where there
 7 was Fairchild sort of knew about possibilities,
 8 asked for more information and didn't get it; is
 9 that right?

10 A. Yes. The gap letters and Phase
 11 IIs.

12 Q. You mean follow on, I think you
 13 testified the follow ons and Phase IIs?

14 A. That is what I mean.

15 Q. The last one is the other stuff;
 16 right?

17 A. Items where we were either given
 18 after the fact notice or just got bills.

19 Q. Let's look at tab 28.

20 A. Okay.

21 Q. Claimant's 461. There is a
 22 reference here to two work plans that describe
 23 the scope of work; do you see that in the first
 24 sentence?

25 A. Yes.

1 SUSAN HALL - DIRECT
 2 A. Right. I pointed out once again
 3 they failed to consult and provide us with
 4 relevant information or to give us prompt
 5 written notice of their proposed response to
 6 potential liability.

7 Q. I guess the question is, these were
 8 Mr. Lease was sending you work plans for scope
 9 of work. Why is that, in this instance do you
 10 say that that was not an opportunity to
 11 participate?

12 A. Because these work plans had
 13 already been provided to the regulators.

14 Q. Why is that a problem, why can't
 15 you still comment on the work plans? Why
 16 wouldn't you still comment?

17 A. Because the appropriate time to
 18 comment on a work plan is when it is being
 19 developed and before it is submitted to the
 20 regulators. Once it is submitted to the
 21 regulators your opportunity to comment is really
 22 fairly useless because you're not going to go to
 23 the regulators and contradict what Alcoa has
 24 said. You lose all credibility with the
 25 regulators if you do something like that. It is

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2 not the way things like this are handled.

3 There is supposed to be an implied

4 good faith here that the parties are going to
5 deal with each other and work together before a
6 work plan is submitted to the regulators.

7 Q. Were you finished?

8 A. Yes.

9 Q. The last two sentences, the one
10 beginning moreover. "Moreover, had we been --"

11 A. Sorry.

12 Q. In that same paragraph page FAIR
13 53314. "Moreover, had we been properly
14 consulted in advance, we would have weighed in
15 on the merits of Mission Geoscience's proposed
16 work plans. Without belaboring the point these
17 work plans are better characterized as 'the full
18 employment for environmental consultants act'."

19 I always appreciate a good turn of
20 phrase. What did you mean by that?

21 A. I don't have them in front of me,
22 but I would have reviewed them and if I used
23 that characterization, it was because they were
24 very robust. They were doing things I think
25 that had already been done. They were very,

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2 more items to touch on, then I think I'm done.

3 THE ARBITRATOR: My understanding
4 you are hoping to finish with this witness
5 today. We can go after 5, if necessary.

6 MR. ZUROFSKY: I am happy to go a
7 little later if you are. I think it is a good
8 idea to try to get done tomorrow.

9 THE ARBITRATOR: You have two
10 witnesses tomorrow?

11 MR. ZUROFSKY: Although my guess
12 they will probably take less time. I don't
13 know. My guess they are a little bit narrower
14 subject matter. We would like to finish
15 Ms. Hall today if we can.

16 THE ARBITRATOR: You are still
17 anticipating finishing all your witnesses
18 tomorrow?

19 MR. ZUROFSKY: Absolutely. Hope
20 so.

21 THE ARBITRATOR: You are still not
22 anticipating redirect?

23 MR. CHESLER: Not so far. Your
24 Honor. I assume you meant rebuttal.

25 THE ARBITRATOR: Yes.

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2 very broad.

3 I guess the best way to describe it
4 they were doing more than was necessary.

5 Q. Were you familiar with -- maybe you
6 weren't here, but are you familiar with Mr.
7 Wolff's testimony in this case in which he
8 discussed these work plans?

9 A. I wasn't here. But I understand
10 that that's what he felt, too.

11 Q. So you agree with Mr. Wolff?

12 A. Well, he agreed with me.

13 Q. There you go. The costs of these
14 items are included in the last category we were
15 looking at?

16 A. That's correct.

17 Q. Next tab is tab 30. We're getting
18 there. Tab 30.

19 THE ARBITRATOR: Maybe time now to
20 recess?

21 MR. ZUROFSKY: Sure, your Honor.

22 THE ARBITRATOR: How are we
23 progressing?

24 MR. ZUROFSKY: We are progressing,
25 we are in the last column. We have a couple

1 SUSAN HALL - DIRECT

2 MR. CHESLER: Not so far.
(Recess taken.)

3 Q. Ms. Hall, when we broke we were
4 sort of making our way through the last category
5 of items. We talked about work at the Temple
6 Avenue facility where the work plans, I think
7 you said had been submitted to the regulators,
8 do you recall that before we broke?

9 A. Yes.

10 Q. I want to turn your attention to
11 tab 30 in your binder. Which is Alcoa
12 arbitration Exhibit bulk C volume 1 of 22.

13 It is a letter dated -- it is
14 originally written March 9, 2003, but I think
15 the parties have all stipulated it is March 9,
16 2004 as the handwriting indicates there?

17 A. Right.

18 Q. Do you recognize this letter?

19 A. Yes, I obviously was not the
20 recipients because I wasn't there at the time,
21 but I reviewed this letter, yes.

22 Q. This purports to be at the top
23 there City of Industry EHS non-compliance issues
24 and accrued cost for corrective actions; do you

1 SUSAN HALL - DIRECT

2 see that?

3 A. Yes.

4 Q. The reference to EHS is that a
5 reference -- this is not an environmental
6 remediation type of matter; is it, Ms. Hall?7 A. No. It is workplace health and
8 safety.9 Q. And EHS compliance is what it says;
10 correct?

11 A. Correct.

12 Q. So is this a request for Fairchild
13 to comment on proposed responses by Alcoa to
14 those situations?

15 A. No.

16 Q. What is it?

17 A. It is just a notice of potential
18 claim.19 Q. Potential claim against the
20 indemnity?

21 A. Yes.

22 Q. If you look at the attachment there
23 is a bunch of invoices attached here; right?

24 A. Yes. There are.

25 Q. That is, if you turn into the

1 SUSAN HALL - DIRECT

2 Q. Is this the document that refers to
3 what we talked about earlier about the work done
4 at the Temple Avenue pump and treat system?5 A. It would appear that way based on
6 what this invoice says. It says groundwater
7 treatment unit. It looks like City of Industry.

8 So --

9 Q. When you referred earlier you
10 recall in your letter you said that the only --
11 the February 25 letter you said the only cost
12 that might have been Fastener Environmental
13 Liabilities were the groundwater remediation at
14 Temple Avenue. Do you recall that testimony a
15 little while ago?

16 A. Yes.

17 Q. But you said there was no notice of
18 consultation. You said you referred to the
19 switch to Mission; do you recall that testimony?

20 A. Yes, I do.

21 Q. This is work for EnviroSolve. So
22 why did you claim, why did you say there was no
23 notice for this work?24 A. Well, because once Alcoa acquired
25 the Fasteners business, we were no longer in the

1 SUSAN HALL - DIRECT

2 document, I am looking at the fifth page which
3 is Bates stamped FAIR 50000180 you see there it
4 says table 1, cost summary by project through
5 December 3, 2003 City of Industry. Then it has
6 a bunch of items. It totals \$120,000.

7 A. I see that.

8 Q. Did Alcoa consult with Fairchild
9 with respect to any of these items as you
10 understand it before these costs were incurred?

11 A. To my understanding they did not.

12 Q. Did you understand these projects
13 continued past the date of this letter, some of
14 them?

15 A. I believe they did.

16 Q. Did Alcoa consult with Fairchild
17 with respect to that?

18 A. No.

19 Q. I want to draw your attention to
20 some of the invoices, in particular. First off
21 at 183.

22 A. 183. I'm there.

23 Q. That is EnviroSolve. Do you see
24 that there?

25 A. Yes.

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2 loop on these things. I mean we knew what was
3 underway when we owned the facilities, but after
4 that we did in the know the scope of the work or
5 what was being undertaken there.6 Q. As you understand it, Ms. Hall, can
7 the amount of, if you will, water being pumped
8 in the pump and treat change, is it a static
9 quantity? Let me rephrase my question.10 Can there be, can a pump and treat
11 system operate at different volumes?12 A. Oh, absolutely. The volume you are
13 pumping, which is generally referred to as
14 gallons per minute, is very important.15 Q. Do you understand that Mission in
16 fact increased the volume as I think there was
17 testimony about that yesterday, as time went on,
18 on Monday?19 A. I think they did. I think this is
20 the site where they increased the volume to 175
21 gallons per minute.22 Q. I said Mission, I meant Alcoa. I
23 didn't necessarily mean Mission itself. Someone
24 working for Alcoa.

25 Let's turn to the invoice that is

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1 SUSAN HALL - DIRECT
 2 located at Bates stamp page FAIR 50000199; do
 3 you see that?
 4 A. I do.
 5 Q. It appears to be an invoice from
 6 Premiere Safety.
 7 A. It does.
 8 Q. I want to turn your attention to
 9 the last paragraph there "These draft procedure
 10 for lock, tag and verify and confined space
 11 entry shipped, I think it says shipped for the
 12 SPAs at the COI up to review to ensure all OSHA
 13 and Alcoa compliance directives were met."
 14 Do you see that?
 15 A. I do.
 16 Q. Do you understand that Alcoa has a
 17 certain set of internal standards or compliance
 18 directives?
 19 MR. CHESLER: Your Honor, I object
 20 for lack of foundation to that. The witness
 21 wasn't even there at the time of the
 22 negotiations.
 23 THE ARBITRATOR: If she knows,
 24 fine. If she doesn't know.
 25 MR. ZUROFSKY: I am not sure what

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1 SUSAN HALL - DIRECT
 2 this letter, Ms. Hall?
 3 A. Yes, in fact I recognize this
 4 letter, I think this may have been the first
 5 letter that I addressed after coming on board at
 6 Fairchild.
 7 Q. What is this letter, as you
 8 understand it, what is Alcoa asking for in this
 9 letter?
 10 A. Well, Alcoa is notifying us that
 11 they have incurred actual costs in connection
 12 with machine guarding at eight --
 13 Q. Eight?
 14 A. -- at eight facilities.
 15 Q. You understand this letter to be a
 16 request from Alcoa to consult or discuss
 17 proposed response?
 18 A. No. This is not an effort to
 19 consult. This is an effort to tell us that they
 20 believe they have a claim.
 21 Q. The number that is listed there, in
 22 the second, penultimate paragraph through
 23 September 2004 is 729 --
 24 A. 729,114.
 25 Q. Some of these facilities, for

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1 SUSAN HALL - DIRECT
 2 negotiations you are referring to.
 3 Q. I asked do you know if Alcoa has a
 4 set of internal compliance directives related to
 5 environmental, health and safety matters?
 6 A. Obviously I didn't in March 9 of
 7 2004 because I wasn't there. But since I have
 8 been in the employ of Fairchild, I have seen
 9 this reference a number of times. So, yes, I
 10 understand based on the documents that I
 11 reviewed that Alcoa has a separate set of
 12 standards.
 13 Q. If you look at the next invoice
 14 from Premiere Safety it is referenced there
 15 again. Do you see that?
 16 A. On 199?
 17 Q. 200. Excuse me. The next page.
 18 There are others is my point. I just wanted to
 19 ask you this question: In your understanding of
 20 the agreement, Ms. Hall, did Fairchild agree to
 21 indemnify Alcoa for work done to meet Alcoa's
 22 internal compliance directives?
 23 A. That is certainly not what the
 24 agreement says.
 25 Q. Turning to 31. Do you recognize

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1 SUSAN HALL - DIRECT
 2 example, St. Cosme and Fullerton and Torrance
 3 were the subject of those gap analysis letters
 4 we looked at before; right?
 5 A. That's correct.
 6 Q. But were the others, were there any
 7 gap analysis letters provided before work
 8 commenced at any of the other facilities?
 9 A. I don't believe there were any gap
 10 analyses for the Hungary site, the Simi Valley
 11 site, the Stoughton site and the Germany site.
 12 I think I'm right, but --
 13 Q. We just looked -- well, strike it.
 14 Did you respond to this letter?
 15 A. I am pretty sure I did.
 16 Q. If you look at 32, was that your
 17 response?
 18 A. Yes.
 19 Q. It says there in the second
 20 sentence "Our response to Alcoa's claim for
 21 \$729,000 in reimbursable expenses for Fastener
 22 Environmental Liabilities are as follows."
 23 The first paragraph there, I just
 24 want to draw your attention to the first line
 25 "First, Alcoa has failed to demonstrate that the

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<p style="text-align: right;">Page 2806</p> <p>1 SUSAN HALL - DIRECT 2 guarding requirements of OSHA section 1910.212 3 or state or foreign equivalents are Fastener 4 Environmental Liabilities as described in the 5 Acquisition Agreement." Do you see that, 6 Ms. Hall?</p> <p>7 A. Yes.</p> <p>8 Q. What are you referring to there, 9 what are you saying?</p> <p>10 A. What I'm saying in order to have a 11 Fastener Environmental Liability, you must have 12 a loss that is based on applicable Environmental 13 Law in respect of a Fastener Environmental 14 Condition. If you look at the definition of 15 Environmental Law it does not, in my estimation, 16 include machine guarding.</p> <p>17 Q. You said this is one of the first, 18 you might have said the first, but one of the 19 first letters that you responded to; right? When 20 you came on board.</p> <p>21 A. Yes. I think it was the first one 22 or the second.</p> <p>23 Q. In order to respond to this did you 24 look at the contract and definition of 25 Environmental Law that you just referenced?</p>	<p style="text-align: right;">Page 2808</p> <p>1 SUSAN HALL - DIRECT 2 it that was inconsistent with the overall scope 3 of that section.</p> <p>4 That section was environmental 5 matters.</p> <p>6 Q. Let's turn and look at that. If 7 you look on page 41.</p> <p>8 A. Of what?</p> <p>9 Q. Sorry. You're right. Tab 1. Page 10 41 of the agreement, it is Bates stamped FC 11 2727. Do you see that?</p> <p>12 A. The definition of Environmental 13 Law?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. You see there is an A, B and C?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Do you read, I think at your 19 deposition Mr. Slifkin asked you a question 20 about this, he only asked you one question about 21 this. And you indicated that you read sort of B 22 and you might have said C, but B as a subset of 23 A. Do you recall that testimony?</p> <p>24 A. Yes, I think that is what I said.</p> <p>25 Q. What did you mean, you didn't</p>
<p style="text-align: right;">Page 2807</p> <p>1 SUSAN HALL - DIRECT 2 A. Yes. I absolutely did.</p> <p>3 Q. In reading it with respect to 4 machine guarding, what was your first reaction?</p> <p>5 A. Well, when you say reading it with 6 respect to machine guarding, what I did is I 7 read it with respect to what a Fastener 8 Environmental Liability is. In order to 9 determine what a Fastener Environmental 10 Liability is you must also look at the 11 definitions of a Fastener Environmental 12 Condition and Environmental Law.</p> <p>13 So I went through all those steps. 14 And when I got to a fastener Environmental Law 15 in my interpretation and estimation, machine 16 guarding does not, does not implicate a fastener 17 Environmental Law.</p> <p>18 Q. Was that your first reaction when 19 you read this contract, Ms. Hall?</p> <p>20 A. Yes. This is the first time I read 21 the contract and when I read the provisions on 22 fastener Environmental Law, I immediately had a 23 flash back to first year law school. It just 24 jumped out at me that the definition of fastener 25 Environmental Law had a very odd subsection to</p>	<p style="text-align: right;">Page 2809</p> <p>1 SUSAN HALL - DIRECT 2 elaborate on that at your deposition, but what 3 did you mean?</p> <p>4 A. Well, what I meant I said that B, I 5 think I said that B and C were subsets of A. I 6 am not entirely sure. But what I was trying to 7 convey is that A is extremely broad. And that B 8 and C are effectively subsumed within A. 9 For example, if you look at the 10 last few words in A, it refers to exposure to 11 hazardous materials. 12 Now if you look at C, it says 13 "exposure of persons or property to hazardous 14 materials." 15 Clearly that C is subsumed and in 16 fact the language is quite similar to A. 17 Given the overall emphasis of this 18 section as relating to, I have to go to the 19 caption of it, environmental matters, in my 20 judgement workplace health or safety was meant 21 to make sure that overlapping OSHA regulations 22 with EPA regulations that related to the 23 workplace were supposed to be within the, 24 embraced within this definition. 25 Q. Ms. Hall, are you aware as to</p>

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1 SUSAN HALL - DIRECT
 2 whether or not there are OSHA or OSHA-like laws
 3 that deal with, let's call it pollution or
 4 hazardous material issues with specific regard
 5 to the workplace?

6 A. Yes. In fact there was a
 7 Memorandum of Understanding entered into with
 8 EPA and OSHA recognizing that there were certain
 9 overlaps with respect to environmental matters
 10 between the two agencies.

11 The Memorandum of Understanding was
 12 for the purpose of the two agencies trying to
 13 work together. For example, the EPA laws tend
 14 to be more stringent.

15 So, in my reading of this, I was --
 16 it was my opinion and my construction that this
 17 definition was designed to make sure that it was
 18 clear that the overlap between EPA and OSHA
 19 regulations was going to be embraced within this
 20 section with respect to environmental matters.

21 The OSHA, my understanding and I am
 22 not an expert, regulates many things in the
 23 workplace in order to make a safe workplace.
 24 Some of which relate to environmental matters,
 25 such as air emissions, such as employees

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1 SUSAN HALL - DIRECT
 2 handling, you know, hazardous substances.

3 Q. Okay.

4 A. Items like that. When I read this
 5 I went back and I thought from first year law
 6 school. The first thing that occurred to me is
 7 ejusdem generis. I went and looked it up.

8 Q. French and Latin today.

9 A. Ejusdem generis, this is a legal
 10 maxim that had to do with interpretation of
 11 mostly statutes. Then in looking at that it led
 12 me to the further maximum of noscitur a sociis.
 13 I realized these words are basically informed by
 14 their companions and that when you look you
 15 can't just take these four words out of context,
 16 you have to consider them in the larger context
 17 in which they appear. That is my opinion.

18 Q. Thank you for that. Going back to
 19 32 which is where we were, tab 32 when we
 20 started this discussion I just want to do one
 21 other item on this letter. We just talked about
 22 the first paragraph. When you said you didn't
 23 think the guarding requirements of OSHA qualify,
 24 that is the discussion we just had?

25 A. Uh-huh.

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1 SUSAN HALL - DIRECT
 2 Q. I want to look at the second
 3 paragraph now?
 4 A. The one that starts "second?"
 5 Q. Yes. The one that starts "second"
 6 about four lines down "nor did Alcoa." That
 7 sentence.

8 THE ARBITRATOR: Where are you?
 9 MR. ZUROFSKY: Tab 32, is the
 10 machine guarding that we left to go to the
 11 agreement.

12 Q. See four lines down, Ms. Hall?
 13 A. Yes, I do.
 14 Q. "Nor did Alcoa report any
 15 non-compliance matters in connection with its
 16 preacquisition due diligence, which specifically
 17 included environmental health and safety surveys
 18 for each of the Fasteners facilities identified
 19 in your letter." Do you see that there?

20 A. I do.
 21 Q. I think you testified at your
 22 deposition you actually later realized in fact
 23 those gap analysis we looked at earlier had come
 24 in earlier, do you recall that?
 25 A. I did. At my deposition I wanted

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1 SUSAN HALL - DIRECT
 2 to make it clear that at some subsequent time I
 3 realized that this was inaccurate. At this
 4 point I was really still fairly new at Fairchild
 5 and getting acquainted with the file.

6 Upon further review I did see the
 7 four gap analysis letters. So I wanted to make
 8 that clear in my deposition that this was not
 9 entirely accurate.

10 Q. Having reviewed those gap analysis
 11 letters, does it change your view with respect
 12 to the appropriateness of the machine guarding
 13 claims by Alcoa?

14 A. No, it didn't. What I was making
 15 clear I was wrong we had never been given any
 16 notice that Alcoa thought there was a
 17 non-compliance. But the overarching theme here
 18 is machine guarding does not qualify as a
 19 Fastener Environmental Liabilities.

20 Q. One other item on this, you talk
 21 about your preacquisition due diligence. Are
 22 you familiar that there has been an argument
 23 made in this case or testimony in this case the
 24 Phase Is, I think Mr. Lease was talking about
 25 his view that Phase Is provided sufficient

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1 SUSAN HALL - DIRECT
 2 notice of proposed responses and whatnot for
 3 these facilities, do you recall that?
 4 A. I am aware they have taken that
 5 position.
 6 Q. Have you reviewed the Phase Is for
 7 facilities we are talking about here?
 8 A. I think I looked at most of them.
 9 I can't tell you exactly when.
 10 Q. Having reviewed that do you agree
 11 the Phase Is satisfy Alcoa's notice requirement
 12 to give notice of proposed responses with
 13 respect to conditions?
 14 A. No. Because they don't give a
 15 proposed response, they just give identification
 16 of an area of possible concern.
 17 Q. Do they also contain, as you
 18 recall, general recommendations?
 19 A. I don't recall. They may have or
 20 they may not have. I just really don't recall.
 21 Q. Turn to 33. I just want to make
 22 sure we introduce the document. 33 is a similar
 23 letter to 31. This one relates to lock, tag and
 24 verify. Do you see that?
 25 A. Yes.

1 SUSAN HALL - DIRECT
 2 reference to preacquisition due diligence. Is
 3 the same answer about the gap analysis in Phase
 4 I?
 5 A. Same answer. At this point I was
 6 just organizing my files. And I had not had an
 7 opportunity to review everything. I had to
 8 recall a lot of files from storage. So, I was
 9 still getting oriented, which is why I wanted to
 10 correct it at my deposition that I was in error
 11 about their having not been earlier letters.
 12 Q. If you look at the --
 13 THE ARBITRATOR: Which tab are you
 14 on now?
 15 MR. ZUROFSKY: Sorry, on tab 34
 16 still. This is Ms. Hall's response.
 17 THE ARBITRATOR: Right.
 18 Q. Second page of that, Ms. Hall, do
 19 you see there at the top it says "Fourth" then
 20 you list a number of items? Do you see that,
 21 Ms. Hall?
 22 A. Yes.
 23 Q. I am looking at Roman iv,
 24 implementing "Alcoa directives in French
 25 operations?"

1 SUSAN HALL - DIRECT
 2 Q. I think this one actually predates
 3 the last one we looked at?
 4 A. Yes. This was the first one I got.
 5 Q. This is the first letter, a week
 6 earlier; right?
 7 A. Yes, this is the first letter I
 8 got.
 9 Q. Again, are your answers in respect
 10 to what is going on with this letter the same as
 11 what was going on with the machine guarding
 12 letter, in terms of I asked you questions
 13 whether or not this was Alcoa seeking to consult
 14 and so on and so forth?
 15 A. No, they were not seeking to
 16 consult. They were seeking to tell us that they
 17 had incurred expenses.
 18 Q. If you turn to tab 34, which is
 19 Claimant's 464, this is your response?
 20 A. Yes, it is.
 21 Q. The first line there similar to
 22 what we talked about earlier on machine
 23 guarding; right?
 24 A. Yes.
 25 Q. The second again you make the

1 SUSAN HALL - DIRECT
 2 A. I see that.
 3 Q. Was it your understanding in
 4 connection with the claims that Fairchild --
 5 sorry, Alcoa was making for these expenses they
 6 were making claims for work done to comply with
 7 Alcoa directives?
 8 A. That's what I saw in their
 9 documentation in support of their claims.
 10 Q. Last topic. Torrance facility
 11 you'll recall we looked at some time ago a
 12 letter from Mr. Lease which had that table
 13 attached to it that related to the California
 14 facilities, do you recall that?
 15 A. Yes.
 16 Q. That letter also contained
 17 information about the Torrance facility; did it
 18 not?
 19 A. Can you remind me where it is.
 20 Q. Sure. Let's go back and look at it
 21 again. It is at tab 19.
 22 A. Okay.
 23 Q. Second paragraph there. Actually
 24 first paragraph says "With respect to the
 25 Torrance facility" four lines down. Do you see

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1 SUSAN HALL - DIRECT
 2 that? First paragraph four lines down with
 3 respect to the Torrance facility?
 4 A. Yes.
 5 Q. Do you see that, Ms. Hall?
 6 A. I do.
 7 Q. It goes on in the second paragraph,
 8 it says "In view of the concentrations
 9 identified in the site groundwater coupled with
 10 potential for off-site migration, Alcoa will
 11 contact the California Regional Water Quality
 12 Control Board." Do you see that?
 13 A. I do.
 14 Q. Was it your understanding when you
 15 reviewed this letter that Alcoa was going to go
 16 approach the Regional Water Quality Control
 17 Board?
 18 A. Yes.
 19 Q. We heard some testimony in this
 20 case about the different approaches of the
 21 Regional Water Quality Control Board versus the
 22 Department of Toxic Substances Control.
 23 A. Yes.
 24 Q. Are you familiar with those
 25 agencies in California?

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1 SUSAN HALL - DIRECT
 2 A. I am.
 3 Q. You say it with some chagrin.
 4 A. I have projects with both.
 5 Q. Do you -- Mr. Wolff testified the
 6 other day, I believe, that he prefers, all
 7 things being equal, to be with the regional
 8 water board; do you agree with that?
 9 A. I agree with it based on my
 10 experience with them. And also on my
 11 environmental consultants out in California,
 12 EnviroSolve have the same opinion.
 13 Q. As of January 25, 2005 Mr. Lease
 14 had informed you they were going to approach the
 15 regional water board; right?
 16 A. Right.
 17 Q. That is what Fairchild knew?
 18 A. Yes.
 19 Q. Turn back, I know you wanted to
 20 look at that letter, we were really looking at
 21 tab 35?
 22 A. Go to tab 35?
 23 Q. Yes, please. What is the date of
 24 this letter, Ms. Hall?
 25 A. February 22, 2006.

1 SUSAN HALL - DIRECT
 2 Q. It says there "The captioned report
 3 is enclosed for your review, this report present
 4 the findings from a California Department of
 5 Toxic Substances Control site visit that was
 6 conducted on January 13, 2006."
 7 Do you see that, Ms. Hall?
 8 A. I do.
 9 Q. Is this the first communication
 10 that Fairchild got subsequent to Mr. Lease's
 11 January 2005 letter regarding contamination,
 12 remediation issues at the Torrance facility?
 13 A. I believe it is.
 14 Q. Is there any mention in here about
 15 negotiations or discussions regarding a Consent
 16 Agreement with the DTSC?
 17 A. No. The last information we had is
 18 that they were going to report to the regional
 19 board.
 20 Q. If you turn now to -- you notice
 21 the reference there it says that the visit was
 22 conducted on January 13, 2006. Do you see that?
 23 A. Yes.
 24 Q. Turn to tab 36 which is again Alcoa
 25 bulk Exhibit C, volume 7 of 22. Do you see

1 SUSAN HALL - DIRECT
 2 that, Ms. Hall?
 3 A. Exhibit 36?
 4 Q. Yes. Tab 36.
 5 A. Yes.
 6 Q. What is the date of this letter?
 7 A. March 2, 2006.
 8 Q. Do you see there in the first
 9 paragraph it says "Please find enclosed a copy
 10 of a corrective action Consent Agreement" I will
 11 skip the docket number, "Effective February 21,
 12 2006 the date on which it was signed by the
 13 DTSC." Do you see that?
 14 A. I certainly do.
 15 Q. Is this the first time Fairchild
 16 heard about that Consent Agreement?
 17 A. It is.
 18 Q. Let's discuss for a second, what is
 19 a Consent Agreement?
 20 A. Consent Agreement is an agreement
 21 that is typically negotiated between a
 22 potentially responsible party and regulatory
 23 authority. It can be a local authority, it can
 24 be regional authority, state authority, it can
 25 be the U.S. EPA.

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1 SUSAN HALL - DIRECT
 2 The significance of it is, it is
 3 going to be your map, your floor plan for lack
 4 of a better word of what you are going to be
 5 required to do going forward to achieve certain
 6 goals.

7 Q. In his deposition Alcoa's
 8 consultant Mr. Hendrix referred to a Consent
 9 Agreement as the bible. Do you agree with that
 10 characterization?

11 A. I guess substantively I think I
 12 know what he was trying to convey. It is your
 13 map for what you are committed to going forward.
 14 It is a very important document.

15 Q. As you mentioned I think two
 16 answers ago, it is subject, the terms of which
 17 are subject to negotiation; is that right?

18 A. That is typically why it is called
 19 a Consent Agreement because the responsible
 20 party has an opportunity to deal with the
 21 regulatory authority. There is some give and
 22 take as opposed to the alternative can be the
 23 authority actually issuing an order compelling a
 24 party to do this, that or the other.

25 So it is always preferred to enter

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1 SUSAN HALL - DIRECT
 2 into a voluntary Consent Agreement with the
 3 regulators, rather than being compelled.

4 Q. The letter we looked at at tab 35,
 5 the one before was dated February 22. Do you
 6 recall that?

7 A. Yes.

8 Q. That is the day after, according to
 9 this letter that agreement was signed.

10 A. Yes. That is what it says.

11 Q. Would you have expected to get some
 12 information from Alcoa before the signing of the
 13 agreement about potential for Consent Agreement?

14 A. Well, I would have hoped to have
 15 been involved in the process of negotiating the
 16 Consent Agreement. Not that -- I recognize that
 17 Alcoa has the right to take the lead with
 18 remedial actions. But if everybody was playing
 19 by the rules of the agreement, Fairchild would
 20 have been given an opportunity to comment on how
 21 this Consent Agreement was going to be, what the
 22 framework would have been, how broad it was
 23 going to be. And, frankly, the first thing
 24 Fairchild would have tried to do is get out of
 25 the DTSC and back in front of the regional

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1 SUSAN HALL - DIRECT
 2 board.
 3 Q. This is the last document I want to
 4 go through with you, Ms. Hall, tab 37 you see
 5 there the first line, this is a letter from you?

6 A. Yes.

7 Q. It says "We received your two
 8 letters of February 22 and March 2 regarding the
 9 Torrance facility."

10 A. Yes.

11 Q. You're responding to the two
 12 letters we just looked at; correct?

13 A. Correct.

14 Q. I want to turn your attention to
 15 the second page at the top there. It says "We
 16 note that the DTSC's January 13, 2006 Phase I
 17 report refers to a 'draft corrective action
 18 Consent Agreement' having been 'issued to the
 19 facility on September 19, 2005' no such draft
 20 Consent Agreement was ever provided to
 21 Fairchild, rather Alcoa unilaterally executed
 22 the corrective Consent Agreement with DTSC on
 23 February 14.

24 "No information was imparted to
 25 Fairchild, no consultation was sought, and no

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1 SUSAN HALL - DIRECT
 2 prompt notice was given with respect to any of
 3 these actions. Accordingly, any expenses
 4 incurred and actions undertaken by Alcoa leading
 5 up to, arising from and in furtherance of
 6 discharging the corrective action Consent
 7 Agreement, are Alcoa's exclusive
 8 responsibility." Do you see that, Ms. Hall?

9 A. I do.

10 Q. Why did you take that position?

11 A. I think it is pretty clear there
 12 that Alcoa unilaterally over a period of months
 13 entered into negotiations with the DTSC, the
 14 consequence of which was a corrective action
 15 Consent Agreement which in the final analysis
 16 obligated Alcoa to do certain things which we
 17 were going to pay the bill for.

18 Q. There have been actions that have
 19 followed that Consent Agreement that Alcoa is
 20 seeking reimbursement for, as you understand it?

21 A. With Torrance?

22 Q. Yes. Following this time frame?

23 A. I believe so.

24 Q. Those expenses are included in, are
 25 they included in that last category, just to

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1 SUSAN HALL - CROSS
 2 finish up our map?
 3 A. Yes. They are.
 4 Q. If you look at the bottom right,
 5 grand total here is what \$15,748,521?
 6 A. Yes.
 7 Q. Those are the items that fall into
 8 each of the categories we just went over; right?
 9 A. That's correct. That is in fact,
 10 that is Alcoa's number.
 11 Q. Let's do the math, is that the
 12 amount Alcoa is claiming in this case less the
 13 Phase IIs you talked about at the top?
 14 A. Right.
 15 MR. ZUROFSKY: I have not going
 16 further. Thank you, Ms. Hall.
 17 A. Thank you.
 18 CROSS-EXAMINATION BY MR. CHESLER:
 19 Q. Good afternoon, Ms. Hall.
 20 A. Good afternoon, Mr. Chesler.
 21 Q. As I think you just indicated, the
 22 number on your chart is in fact the total amount
 23 that Alcoa was seeking, except for the Phase
 24 IIs; correct?
 25 A. Yes, I believe that's correct.

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1 SUSAN HALL - CROSS
 2 Q. So when Mr. Miller came in here
 3 yesterday and testified even in fact paid some
 4 of our claims under 11.6 he was wrong; wasn't
 5 he?
 6 A. No he wasn't wrong.
 7 MR. ZUROFSKY: Objection that is
 8 mischaracterizing Mr. Miller's testimony. It
 9 will speak for itself, but I don't think that is
 10 what he said.
 11 Q. In fact you know that Fairchild has
 12 not paid any of the 11.6A indemnification claims
 13 which are the subject of this proceeding; isn't
 14 that correct?
 15 A. I think that is correct.
 16 Q. Thank you. Before you got to the
 17 company, you understand that Alcoa had hired
 18 consultants and paid those consultants to
 19 conduct Phase I studies?
 20 A. Yes. That is my understanding.
 21 Q. You understand that Alcoa is not
 22 seeking reimbursement for the Phase I studies;
 23 correct?
 24 A. Correct.
 25 Q. Subsequently Alcoa prepared scopes

1 SUSAN HALL - CROSS
 2 of work for Phase II studies, this is after the
 3 closing of the transaction; correct?
 4 A. That's my understanding. May I --
 5 Q. Excuse me.
 6 A. Just to be clear, my understanding
 7 is that the transaction actually closed in
 8 December of 2002. And I believe scopes of work
 9 were provided to Mr. Hodge in November. I don't
 10 know, that is probably just a technical point.
 11 Q. It is, but I appreciate the
 12 clarification.
 13 Those were scopes of work for work
 14 to be done later in Phase II investigations that
 15 were going to follow the closing of the
 16 transaction; correct?
 17 A. That's my understanding.
 18 Q. Then prior to any of the Phase II
 19 work being done, Alcoa provided Fairchild with
 20 revised scopes of work; correct?
 21 A. I believe that's correct.
 22 Q. To which Fairchild made no
 23 comments, no substantive comments on the revised
 24 scopes of work which were provided prior to the
 25 Phase IIs being conducted; isn't that correct?

1 SUSAN HALL - CROSS
 2 A. I don't have anything in front of
 3 me that suggests it is not correct.
 4 Q. Then Alcoa conducted or its
 5 consultants conducted the Phase II studies and
 6 they provided the Phase II studies to Fairchild;
 7 correct?
 8 A. That's correct.
 9 Q. Then before you got to the company
 10 several folks at Fairchild, including Mr. Hodge
 11 and Mr. Beckford, prepared a response to Alcoa
 12 about the Phase II results and the work that was
 13 proposed in those Phase II studies to be done;
 14 correct?
 15 A. That's correct.
 16 Q. Both Mr. Beckford and Mr. Hodge
 17 were at Fairchild at the time the agreement with
 18 Alcoa to sell this business was negotiated,
 19 drafted, signed and closed; correct?
 20 A. That's correct.
 21 Q. You weren't there?
 22 A. I was not there.
 23 Q. You were off practicing law
 24 somewhere, you weren't working for Fairchild
 25 either inside or outside; correct?

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1 SUSAN HALL - CROSS
 2 A. Absolutely correct.
 3 Q. These two folks, Beckford and Hodge
 4 who were there prepared these responses to the
 5 Phase II reports and among other things, they
 6 indicated in a transmittal from Mr. Beckford a
 7 number of items in their response for which they
 8 put the letter Y indicating that there might in
 9 fact be an indemnifiable claim related to
 10 certain Phase II work; correct?
 11 A. Not exactly correct. My
 12 understanding is that Mr. Beckford put those Ys
 13 there indicating further follow-up. And Mr.
 14 Hodge's contribution to that chart consisted of
 15 the analysis of the Phase IIs.
 16 Q. Let's be precise. Mr. Beckford's
 17 Ys didn't suggest, as you just said, further
 18 work. It suggested and in fact said that those
 19 items were items for which Alcoa might well have
 20 indemnifiable claims relating to the work done
 21 as part of the Phase II process; isn't that
 22 true?
 23 A. I'd have to look at his letter, but
 24 whatever it says is what it says.
 25 Q. Right. As you sit here today you

1 SUSAN HALL - CROSS
 2 don't have any reason to disagree with what I
 3 just said; do you?
 4 A. No. I just want to be precise.
 5 Q. In the Phase II reports there were
 6 described both general and specific risk
 7 assessments that were recommended to be done by
 8 Alcoa's consultants; isn't that true?
 9 A. I would have to look at them. I
 10 don't recall that they made certain -- I don't
 11 recall that they made recommendations. I
 12 believe that they highlighted areas of concern.
 13 But I frankly don't recall. There were a lot of
 14 them. I don't have them in front of me.
 15 Q. Fair enough. The documents speak
 16 for themselves, they are all in evidence. If
 17 they in fact recommend both general and specific
 18 risk assessments you wouldn't quarrel with that
 19 would you?
 20 A. I wouldn't quarrel with that. I'm
 21 just saying it has been a while.
 22 Q. So then you get hired, you come in
 23 and you counterman the position Mr. Beckford
 24 took when he listed all those Ys in his response
 25 to the Phase II assessments that were provided

1 SUSAN HALL - CROSS
 2 to Fairchild and Alcoa; correct?
 3 A. I disagreed with Mr. Beckford's
 4 analysis of the contract, yes, I did.
 5 Q. Beckford, Mr. Beckford is a lawyer,
 6 you're a lawyer; correct?
 7 A. Correct.
 8 Q. Two lawyers working for the same
 9 company at two different times disagree about
 10 the meaning of this agreement; correct?
 11 A. Actually three lawyers disagreed.
 12 Q. Okay. Three lawyers, even better.
 13 The lawyers with whom you disagreed were
 14 actually at the company when this deal was
 15 negotiated, signed and closed and you weren't;
 16 correct?
 17 A. That's correct.
 18 Q. Now, the chart you spent most of
 19 your direct-examination talking about, the chart
 20 with all the numbers on it --
 21 A. Yes.
 22 Q. -- but for, I think you said maybe
 23 one matter or two, for example, the work that
 24 was being done at City of Industry pumping the
 25 water, remember you said that was a remediation

1 SUSAN HALL - CROSS
 2 project?
 3 A. Yes. The pump and treat.
 4 Q. But for that virtually everything
 5 on that chart falls into one of two categories,
 6 doesn't it, it is either related to workplace
 7 health and safety or it is some kind of an
 8 assessment of potential environmental work to be
 9 done or potential remediation to be done;
 10 correct?
 11 A. I think that's generally true, yes.
 12 Q. Let's take those two categories.
 13 Your position as you sit here today is that the
 14 workplace health and safety claims that Alcoa
 15 has submitted are not covered as a matter of
 16 contract by the indemnification provision of the
 17 agreement; isn't that right?
 18 A. Yes, that's correct.
 19 Q. So we could be sending you notices
 20 every day saying here is a workplace health and
 21 safety projects we want to do, here is a machine
 22 we want to guard, here is a railing we want to
 23 put up to prevent people from falling and
 24 hurting themselves, your position is none of
 25 that is covered, not because of notice problems,

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1 SUSAN HALL - CROSS
 2 not because you didn't get to participate in the
 3 decision to put up a railing, but because the
 4 contract doesn't cover it in your view; isn't
 5 that true?
 6 A. No. That is not correct.
 7 Q. It is not correct?
 8 A. No, I think I --
 9 Q. You answered my question. It is
 10 not correct?
 11 A. That's not correct.
 12 Q. All right. Your position is if a
 13 workplace health and safety item falls under the
 14 description of Environmental Law in subpart A or
 15 C of 3.24G ii, then it is covered but only in
 16 that event; correct?
 17 A. Could you repeat that.
 18 Q. Yes. In order for a workplace
 19 health or safety claim to be covered under the
 20 indemnity in your view, it must be an
 21 environmentally related workplace health and
 22 safety claim; correct?
 23 A. That's correct.
 24 Q. And if it is not environmentally
 25 related, if it is a plain old workplace health

1 SUSAN HALL - CROSS
 2 A. Yes, I do.
 3 Q. It is to put some kind of
 4 mechanism, guard or shield around a machine to
 5 prevent the workers from being hurt, for example
 6 by having to put their hands into an area with
 7 moving parts?
 8 A. That's my understanding.
 9 Q. Tell me how preventing somebody
 10 from losing a finger by sticking their hand into
 11 the sharp spaces in a machine would ever be a
 12 "Environmental workplace health and safety"
 13 item?
 14 A. I can't really sit here today
 15 think of any instances where it would be.
 16 Q. Nor can I. Let's take electricity
 17 control, one of the items we sought
 18 indemnification. Is modifications of to
 19 equipment to prevent people from being
 20 electrocuted or harmed from surges of
 21 electricity, do you understand that?
 22 A. Do I understand what?
 23 Q. That we made indemnification claims
 24 for management and control of electricity in
 25 connection with the operation of equipment.

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1 SUSAN HALL - CROSS
 2 or safety claim like an OSHA claim, it is not
 3 covered; correct?
 4 A. That's correct.
 5 Q. You were here yesterday when I
 6 asked Mr. Miller to give me an example of how
 7 fall protection, protecting people against
 8 falling off of high places could be covered
 9 under the agreement. Do you remember that?
 10 A. I do.
 11 Q. His explanation was that if a
 12 solvent bubbled up out of the ground and formed
 13 a puddle and somebody slipped on the puddle and
 14 fell off of a high place then it was cover;
 15 right? Do you remember that?
 16 A. That is what he said.
 17 Q. That is what he said. I remember
 18 it very well. But if the same person fell off
 19 the same platform because there was no railing
 20 there, but there was no puddle of solvent that
 21 had somehow bubbled up from underground, then it
 22 is not covered; correct?
 23 A. Correct.
 24 Q. Let's take machine guarding, you
 25 understand what machine guarding is; don't you?

1 SUSAN HALL - CROSS
 2 A. Yes.
 3 Q. How can that be an environmentally
 4 related workplace health or safety claim?
 5 A. I don't think it is.
 6 Q. I take the same thing is true about
 7 mobile equipment rules to make sure people don't
 8 get run over by tractors and things, that can't
 9 be environmental; can it?
 10 A. I can't really think of any
 11 instances where it would have an environmental
 12 nexus.
 13 Q. How about lock tag procedures, you
 14 understand what that is, making sure a machine
 15 doesn't start up accidentally during maintenance
 16 and cut somebody's hand off?
 17 A. Yes, I understand what that is.
 18 Q. That can't be environmentally
 19 related workplace health and safety claim; can
 20 it?
 21 A. Based on the claims Alcoa submitted
 22 for those items I do not see an environmental
 23 nexus.
 24 Q. So we are now about 24 hours away
 25 from finishing this entire two-week proceeding,

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1 SUSAN HALL - CROSS
 2 you correct me if I'm wrong, the only example in
 3 this entire record that is consistent with your
 4 view of what that contract language means is Mr.
 5 Miller's explanation of a puddle of solvent
 6 bubbling out of the ground and somebody slipping
 7 off a platform and hurting themselves, that is
 8 the only example of a workplace health or safety
 9 claim that ever been introduced to this judge as
 10 an example of what would be covered under the
 11 indemnification; isn't that true?

12 A. That is what Mr. Miller testified.

13 Q. He is the only one; isn't he?

14 A. Well I'm testifying today. And
 15 there are OSHA regulations that address
 16 environmental matters.

17 Q. Yes, but I just asked you, I have
 18 gone through every category of workplace health
 19 and safety we asked about, machine guarding,
 20 fall protection, mobile equipment, electrical
 21 safety, lock and tag out procedures, you haven't
 22 been able to give me a single example of how any
 23 of those could involve an environmental
 24 workplace health and safety claim and thereby
 25 get under your indemnification; have you? Not

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1 SUSAN HALL - CROSS
 2 one?

3 A. No. Because those are not -- those
 4 do not satisfy the definition of Environmental
 5 Law. In my reading.

6 Q. Okay.

7 A. Frankly, if I might add --

8 Q. No. No. That is for redirect.

9 Let's go back to your summary
 10 chart. We have agreed but for maybe one
 11 remediation involving pumping water at City of
 12 Industry, everything else on that chart is
 13 workplace health and safety or assessments,
 14 studies or assessments?

15 A. Could you tell me which are you
 16 looking at that chart?

17 Q. Yes.

18 A. Which column?

19 Q. The whole thing. Now let's talk
 20 about assessments, investigations or assessments
 21 of possible work to be done to clean-up
 22 environmental problems. Your position, isn't it
 23 correct that your position is that, as you said
 24 in one of your letters, and as your counsel said
 25 he loves a good turn of phrase, I think your

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1 SUSAN HALL - CROSS
 2 turn of phrase was something like you guys can
 3 continue to do assessments all you want, unless
 4 and until you do remediation we are not paying,
 5 it is not covered; isn't that right?

6 A. I rather look directly at my
 7 letters.

8 Q. Tab 20. Would you turn to tab 20,
 9 Ms. Hall. Would you turn to the second page of
 10 the letter. This is your letter; isn't it?

11 A. Yes, it is.

12 Q. We are looking at the page marked
 13 340 in the bottom right.

14 A. Correct.

15 Q. Bottom of that page last paragraph
 16 that carries over you said "In short Alcoa can
 17 commission all the environmental assessments it
 18 wishes, such assessments be they environmental,
 19 workplace health and safety or OSHA are not
 20 Fastener Environmental Liabilities. The
 21 expenses associated with implementing a remedy
 22 based on those assessments might qualify. But
 23 not the assessments themselves. Unless and
 24 until there is a Fastener Environmental
 25 Condition there is no basis for

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1 SUSAN HALL - CROSS
 2 indemnification."

3 You wrote those words; right?

4 A. I did indeed.

5 Q. You stand by that position; right?

6 A. I do.

7 Q. So whether or not Alcoa gave you
 8 what you view as timely notice of an assessment,
 9 whether or not Alcoa permitted you, in your
 10 view, to participate in determining what that
 11 assessment would be or how it would be done,
 12 your position is, as you wrote in that letter,
 13 assessments are not covered; isn't that true?

14 A. I think I have to limit this to the
 15 items that I was addressing at this time this is
 16 February 25, 2005. There could be instances
 17 where an assessment or investigation was
 18 required by some sort of regulatory driver which
 19 would make a difference.

20 If you're doing an assessment or
 21 investigation or a study as a result of the
 22 regulators requiring that, that's a different
 23 story.

24 Q. We will come to a few of those.
 25 Because you refuse to pay those, too, we will

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1 SUSAN HALL - CROSS

2 come to those soon. Let me go back to what you
 3 said on February 25, 2005 you said Alcoa can
 4 commission all the environmental assessments it
 5 wishes, you didn't say with respect to only the
 6 ones you already done; did you, in fact your
 7 sentence says you can do whatever you want but
 8 I'm not paying for it. Doesn't it?

9 A. That's what it says, Fairchild is
 10 not paying for it.

11 Q. The fact is your 15 million and
 12 charge total on your summary chart but for one
 13 instance of what you call remediation is made up
 14 entirely either of workplace health and safety
 15 items which you say are not indemnified as a
 16 matter of contract and assessments which you say
 17 are not indemnified as a matter of contract;
 18 isn't that true?

19 A. I would say by and large that is
 20 probably correct.

21 Q. So the two hours we just spent
 22 listening to you tell your counsel and the judge
 23 about how we didn't give you timely notice, we
 24 didn't give you an opportunity to participate
 25 and all that explanation of the bad things my

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1 SUSAN HALL - CROSS

2 client has done in not complying with the
 3 contract has absolutely nothing to do with your
 4 position on why you're not going to pay for
 5 either of those two categories; isn't that so?

6 A. I don't think that is a correct
 7 statement. Because -

8 Q. You don't think it is a correct
 9 statement, fine.

10 THE ARBITRATOR: If it is an
 11 alternative ground, should I disagree with her
 12 assessment of language of the contract, I
 13 suppose that is another defense I would have to
 14 consider; isn't it?

15 MR. CHESLER: Sorry, your Honor, I
 16 am not sure I understood your question.

17 THE ARBITRATOR: If she is wrong
 18 on how she is interpreting the contract in those
 19 regards I still have to consider the question
 20 of, the second question she raised about notice.
 21 It is a separate ground. She has got
 22 alternative ground of defense. She may be wrong
 23 on both of them, but she has alternative ground.

24 MR. CHESLER: Absolutely, your
 25 Honor. I am simply trying to make clear to the

1 SUSAN HALL - CROSS
 2 court, I think I have, most of what we have
 3 heard today is on a ground that is, under her
 4 own interpretation of the contract, irrelevant.
 5 I agree with you there is a separate question of
 6 notice. Your Honor can read the contract as
 7 well as anybody.

8 THE ARBITRATOR: It is a
 9 complicated case, there are a lot of details, I
 10 am not critical of counsel. I think you have
 11 done a marvelous job pulling it together in the
 12 time you have, but there is a lot of detail
 13 here. No question.

14 MR. CHESLER: Absolutely. I
 15 agree. I think the point is made.

16 Q. We are going to talk about some of
 17 the notice in a little bit on your alternative
 18 ground with respect to your interpretation of
 19 3.24 the definition of Environmental Law which
 20 you testified to on direct -

21 A. Correct.

22 Q. You would agree with me, I take it
 23 you're the one who came up with this
 24 interpretation of what workplace health and
 25 safety means under that paragraph; aren't you?

1 SUSAN HALL - CROSS
 2 A. I am not entirely sure what you
 3 mean. When I came on board I was the only one
 4 that had this interpretation; is that what
 5 you're suggesting or asking?

6 Q. Let me ask. When you came on board
 7 you read the contract. You came up with this
 8 interpretation of what it meant. You thought it
 9 was a subset of paragraph A, I think you said.
 10 You did that on your own, you didn't consult
 11 with anybody else at the company about that; did
 12 you?

13 A. Yes, I did.

14 Q. You did?

15 A. I did.

16 Q. Before you came up with the
 17 interpretation?

18 A. Well, I arrived at that
 19 interpretation. I then consulted with Donald
 20 Miller and Ernesto Beckford.

21 Q. That is my point. First you came
 22 up with the interpretation, is your testimony
 23 before you asked them what they thought it
 24 meant?

25 A. Yes.

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1 SUSAN HALL - CROSS

2 Q. You know that up until the time you
 3 got there, any submissions of claims for
 4 workplace health or safety expenses by my client
 5 to your company were not in fact rejected out of
 6 hand. The response was we need more
 7 information; right?

8 A. That's my review of the
 9 correspondence. That's correct.

10 Q. The words of the contract hadn't
 11 changed between the time Mr. Miller and Mr.
 12 Beckford were sending letters telling us to give
 13 them more information and the time you arrived,
 14 read the agreement and decided you understood
 15 what it meant; did it?

16 A. No.

17 Q. It was only after you got there
 18 that a letter came saying we are not paying for
 19 these workplace health and safety claims, not
 20 because of the information we have or don't
 21 have, not because of the notice or
 22 participation, but because they are not
 23 indemnified. You are the first person who ever
 24 said that to Alcoa; isn't that right, as far as
 25 you know?

1 SUSAN HALL - CROSS

2 A. I also said there wasn't timely
 3 notice. I think in fairness you
 4 mischaracterized Fairchild's letters in response
 5 to Mr. Lease's gap letters.

6 Q. The letters say whatever they say.

7 A. They do.

8 Q. They are all in evidence.

9 A. They also say these may not
 10 qualify, please give us more information.

11 Q. May not?

12 A. May not.

13 Q. You concluded in one reading, first
 14 year law school training, they did not? You
 15 didn't have any qualification or doubt in your
 16 mind; did you? This was unambiguous to you;
 17 wasn't it?

18 A. No, it was not unambiguous. I
 19 think the judge has made the same conclusion. I
 20 looked at the definition of Environmental Law in
 21 the context of the entire section. To me those
 22 words had to be informed by the context in which
 23 they appeared. That's my reading. Reasonable
 24 minds can differ. I guess that is really why we
 25 are here today.

1 SUSAN HALL - CROSS

2 Q. I am not sure I now understand your
 3 testimony. You read the contract. You said
 4 what popped into your mind was the basic axiom
 5 you learned about interpreting contracts in your
 6 first year of law school. Based upon that
 7 reading, no parole evidence, nothing else, based
 8 upon your reading of the document you understand
 9 what the definition of Environmental Law was, in
 10 particular, that workplace health or safety was
 11 in fact subsumed within or included within
 12 subpart A of that section; isn't that your
 13 testimony?

14 A. That is my testimony, yes.

15 Q. Same contract was available to your
 16 predecessors who said it may be covered, we need
 17 more information; right?

18 A. Apparently.

19 Q. Thank you. Would you look at 3.24,
 20 I think tab 1 in your book.

21 A. Could you tell me the contract
 22 page.

23 Q. I will in a moment. If you give me
 24 a moment.

25 THE ARBITRATOR: 41, Environmental

1 SUSAN HALL - CROSS

2 Law.

3 Q. 41. The words, you pointed out
 4 before the words "exposure to hazardous
 5 materials" in A are similar to words in C. They
 6 are not the same. C says "exposure of persons
 7 or property to hazardous materials." But there
 8 are some common overlapping words. Remember you
 9 pointed that out earlier?

10 A. Yes.

11 Q. Do you see any common or
 12 overlapping words between A and B?

13 A. There is probably an "or" in both.

14 Q. Yes, but for the "or" is there any
 15 other overlapping word, do you see the "words
 16 workplace health or safety" in A?

17 A. No, I don't.

18 Q. Do you see that A ends with a
 19 comma, and then comes B, which ends with the
 20 word "or," then comes C?

21 A. Yes, I see that.

22 Q. When you were taking contract law
 23 in your first year of law school did you learn
 24 what the word "or" in a string of separated
 25 subclauses to a contract means?

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1 SUSAN HALL - CROSS
 2 A. I believe I did.
 3 Q. What did you learn it meant?
 4 A. I believe it is disjunctive.
 5 Q. Disjunctive, meaning it is not in
 6 one, but it is in the other, isn't that the
 7 definition of disjunctive?
 8 A. Probably.
 9 Q. Thank you. Did that pop into your
 10 head when you read this when you were thinking
 11 of your Latin axiom?
 12 A. I don't remember whether I was
 13 focused on commas, I was focused on the overall
 14 substance and meaning of the whole section.
 15 Q. I think we can save a little time
 16 on the next subject I was otherwise going to ask
 17 you about because I think Mr. Zurofsky covered
 18 it with you toward the end of
 19 direct-examination.
 20 With respect to a variety of these
 21 workplace health or safety items that we sought
 22 indemnification for, lock tag, machine guarding,
 23 I guess those two in particular, when you wrote
 24 to us at some point saying you made these
 25 requests and you never sent a single letter

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1 SUSAN HALL - CROSS
 2 correspondence the overarching reason which
 3 takes precedence in your mind over keeping you
 4 abreast of what we were doing is that you don't
 5 believe they were covered by the agreement;
 6 right?
 7 A. That's correct.
 8 Q. It is also the case, you spent a
 9 lot of time showing that between the time we
 10 gave you the gap -- not you, but gave Fairchild
 11 the gap analysis letters shortly after the
 12 closing, and the time we later submitted
 13 invoices on those same categories, the numbers
 14 had gone up, we spent more money; right?
 15 A. Well, the gap analyses I believe
 16 had estimates.
 17 Q. Right.
 18 A. The actual invoices were actual
 19 invoices.
 20 Q. Right. As you said there were
 21 discrepancies, perhaps a less pejorative term,
 22 the estimates were lower than the actual expense
 23 turned out to be; right?
 24 A. That is a very fair
 25 characterization.

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1 SUSAN HALL - CROSS
 2 giving us any notice or any kind of advance
 3 warning, you admitted now you hadn't gone back
 4 and looked at the prior correspondence. That
 5 was in error; correct?
 6 A. I had looked at prior
 7 correspondence. But I had not looked at those
 8 four letters. That's correct.
 9 Q. Now you have looked at those
 10 letters, the so-called gap analysis letters and
 11 while you admit the language of your letter was
 12 wrong, it hasn't changed your view they are not
 13 covered; correct?
 14 A. That's correct.
 15 Q. The reason again for that, you
 16 simply read the contract as not covering those
 17 items; right?
 18 A. That and -- yes, I read it as not
 19 covering those items, but there were also the
 20 fact we were not kept -- we were not kept
 21 apprised of exactly what Alcoa was going to do
 22 with respect to those, their alleged
 23 non-compliances.
 24 Q. You keep saying that, but you said
 25 on direct and also in some of your

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1 SUSAN HALL - CROSS
 2 Q. Your view is as of the time the gap
 3 analyses were submitted with the lower estimates
 4 that turned out to actually cost more, those
 5 weren't covered items as of that time either;
 6 were they?
 7 A. Mr. Chesler, I wasn't there when
 8 those gap letters came. So, I shouldn't be
 9 required to address those.
 10 My position when I got the bills
 11 for machine guarding and the lock, tag and
 12 verify is set out in my letters. I did not read
 13 the contract as embracing those kind of claims.
 14 For the reasons we have already gone over.
 15 Q. My question probably wasn't
 16 particularly well worded. I understand your
 17 point. Your view of the contract is what it is.
 18 You formed that view later because you got there
 19 later; right?
 20 A. Right.
 21 Q. The gap analyses letters were sent
 22 before any work had been done though; correct?
 23 A. I believe that's correct. I'd have
 24 to look at them to be sure. If you are going to
 25 represent to me that's the case, I accept that.

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1 SUSAN HALL - CROSS

2 Q. A large component on the workplace
3 health and safety side of the ledger as opposed
4 to the contamination side if you will,
5 remediation side, a large component of the
6 workplace health and safety side of those
7 requests was machine guarding; right?

8 A. I don't have them in front of me.
9 Again, if that is what you're telling me it is,
10 I agree, I don't dispute that.

11 Q. Were you here yesterday when Mr.
12 Miller testified about machine guarding he
13 said -- counsel this is transcript page 2362 --
14 I asked, I guess I didn't, counsel for Fairchild
15 asked on direct, 2361 "Alcoa did not ask for any
16 more due diligence about machine guarding and
17 those types of issues in connection with this
18 transaction?"

19 Mr. Miller's answer at 2362,
20 beginning at line 3 was "no, it" referring to
21 machine guarding, "it is the kind of thing you
22 could walk into the plant, look at the machines,
23 count the machines and see instantly whether or
24 not they had machine guards."

25 Were you here for that testimony?

1 SUSAN HALL - CROSS

2 due diligence and providing more information,
3 because there is no foundation for my
4 understanding that question.

5 I suppose that someone could walk
6 into a facility and look at machines and
7 determine whether there is machine guarding.
8 But I am not sure how that relates to --

9 THE ARBITRATOR: I don't think Mr.
10 Miller's answer was quite responsive to the
11 question. It is a little bit confusing.

12 MR. CHESLER: I think that is a
13 fair characterization, your Honor. Let me try
14 it this way.

15 Q. Let's not quarrel, since it wasn't
16 my question I have no pride of authorship.

17 A. It wasn't my answer, so I have none
18 either.

19 Q. I understand, but unfortunately
20 you're on the witness stand and I'm not. Let's
21 try again.

22 Let's put aside whether the
23 question and answer matched each other or what
24 the meaning of the question was. Let me ask you
25 again, do you have any reason to disagree with

1 SUSAN HALL - CROSS

2 A. I believe I was.

3 Q. You agree with that; don't you?

4 A. I actually didn't understand the
5 question as you read it.

6 Q. Do you understand the answer?

7 A. Well, if you could read the
8 question again.

9 Q. I'd be happy to.

10 A. I'd appreciate it.

11 Q. "Question: Alcoa did not ask for
12 any more due diligence about machine guarding
13 and those types of issues in connection with
14 this transaction?" Meaning the purchase of the
15 business.

16 "Answer: No. It" machine guarding,
17 "is the kind of thing you could walk into the
18 plant, look at the machines, count the machines
19 and see instantly whether or not they had
20 machine guards."

21 Do you agree with Mr. Miller's
22 answer?

23 A. I don't disagree with Mr. Miller's
24 answer, I still don't understand what the
25 context of the question was in terms of their

1 SUSAN HALL - CROSS

2 Mr. Miller's sworn testimony that machine
3 guarding "Is the kind of thing you could walk
4 into the plant, look at the machines, count the
5 machines and see instantly whether or not they
6 had machine guards" do you agree with that?

7 A. I just feel like I can't answer it
8 because I don't know what you would see if you
9 went into a facility. I suppose you could
10 determine whether, if you know where a machine
11 is supposed to have a guard. I don't know that
12 I would know that walking in.

13 So, I just don't feel I can answer
14 that question. He answered it the way he did.
15 I can't dispute or --

16 Q. Fine. You can't answer it. He
17 answered it the way he did.

18 A. He answered it the way he did.

19 Q. You understand that under the same
20 agreement provision which you talked about at
21 some length on direct, Fairchild had among the
22 rights which you for some reason didn't mention,
23 the right to visit their former facilities; do
24 you understand they had that right?

25 A. I understand the contract provides

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1 SUSAN HALL - CROSS
 2 Fairchild with reasonable access to the sites.
 3 Q. And in fact they could question
 4 Alcoa's consultants about any of the work they
 5 were doing; right?
 6 A. I think that is another one of the
 7 rights.
 8 Q. They could go visit to the
 9 facilities, talk to the people there; right?
 10 A. I think with Alcoa's permission,
 11 that's a right that's in the contract.
 12 Q. So, I take it you don't know what
 13 happened before you got to the company, but
 14 since you have gotten there, are you aware of a
 15 single instance of where either you or someone
 16 else who had something to do with this
 17 transaction has ever asked Alcoa to allow any
 18 Fairchild personnel to visit a single one of
 19 these facilities, for example, to look at the
 20 machine guarding or lack thereof?
 21 A. Not that I'm aware of.
 22 Q. If Mr. Miller is right, that all
 23 you have to do is walk into the plants and in
 24 his words, instantly see whether or not they
 25 have machine guards, then all of this stuff

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1 SUSAN HALL - CROSS
 2 guarding now. One theory it is not covered.
 3 The other theory is, as the judge pointed out,
 4 if he disagrees with your reading of the
 5 agreement, he still has to consider whether for
 6 example we gave you adequate notice and what if
 7 any effect that has on our rights to recover
 8 depending upon what the judge determines about
 9 the quality of our notice. You heard him say
 10 that; right?
 11 A. I did.
 12 Q. With all due respect, I am on the
 13 alternative theory. Let's put aside your
 14 contractual view which says it doesn't matter
 15 how much notice you give me you are not getting
 16 the money. Let's go to the alternative theory.
 17 I am asking you a very simple
 18 question. You admitted your company has the
 19 right to reasonable access to these facilities
 20 we bought from you; correct?
 21 A. I agree.
 22 Q. Mr. Miller says you can walk into a
 23 plant, in his words, "instantly see whether
 24 machines have guards, you can look at the
 25 machines." That is what he said. Do you know

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1 SUSAN HALL - CROSS
 2 about giving you notice and telling you, your
 3 alternative arguments, could have been cleared
 4 up by just picking up the phone, calling Mr.
 5 Lease and saying I want to come over and see the
 6 machine guarding at the facility; couldn't it?
 7 Yes or no?
 8 A. I can't really answer that yes or
 9 no.
 10 Q. You can't answer that question?
 11 A. I can't answer it yes or no.
 12 Q. All right. If you can't answer it
 13 yes or no, I'll move on. Seemed to me to be
 14 pretty simple, but if it is too complicated.
 15 A. We have already been through the
 16 fact in my opinion the contract does not cover
 17 machine guarding and lock, tag and verify. So
 18 walking into a facility to observe what the
 19 situation is is of no moment.
 20 Q. We are playing a little semantics
 21 game, with all due respect, Ms. Hall. We think
 22 it is covered, you think it is not. Right?
 23 As the judge correctly pointed out
 24 you come here today and provided under oath two
 25 alternative theories. I am talking about machine

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1 SUSAN HALL - CROSS
 2 whether you can comment on that one way or the
 3 other; correct?
 4 A. Correct.
 5 Q. If he is right, and given the
 6 facility access you had, this whole issue of
 7 millions of dollars of machine guarding could
 8 have been cleared up if you had picked up the
 9 phone and said to Mr. -- to our people on our
 10 side, any one of them, I want to come look at
 11 the facilities and inspect the machines; yes or
 12 no?
 13 A. No. Because by the time I'm on
 14 board, Mr. Chesler, I am getting bills for
 15 machine guarding.
 16 Q. Fair point. How about before you
 17 got on board -- excuse me, let me finish. When
 18 we sent the gap letters which you and I think
 19 just agreed were before any machine guards were
 20 put on any machines, we sent gap analysis
 21 letters saying we want to do machine guarding.
 22 Contract still said at that time your company
 23 had a right to reasonable access to the
 24 facilities; correct?
 25 A. It did. It does.

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1 SUSAN HALL - CROSS

2 Q. Yes or no, could Mr. Miller or Mr.
 3 Hodge or Mr. Beckford, any of the folks who
 4 preceded you, as far as you know could they have
 5 exercised Fairchild's right to reasonable
 6 access, just called up Mr. Lease and said I want
 7 to go visit any of the facilities and seen for
 8 themselves what was on the machines, what wasn't
 9 and that's all they needed to see, yes or no?

10 A. Yes.

11 Q. Thank you.

12 A. And if they had perhaps they would
 13 have exercised that right if their request for
 14 additional information had been provided. But
 15 it wasn't.

16 Q. They needed additional information
 17 to pick up the phone and say let me go down the
 18 road to Fullerton and see what's there --
 19 withdrawn.

20 THE ARBITRATOR: Is there more
 21 than one way to put a guard on a machine? I
 22 don't know much about machine guarding.

23 MR. CHESLER: Your Honor, I always
 24 tell my client I know almost nothing about
 25 everything. That falls into the category of

1 SUSAN HALL - CROSS

2 A. That's correct.
 3 Q. He says it addresses the California
 4 Regional Water Quality Control Board's request
 5 for additional monitoring wells at the site.

6 A. That is what it says.

7 Q. At the bottom it says "If you have
 8 any questions or comments on the information in
 9 this letter or the attachments please call me."

10 He gives you his telephone number; correct?

11 A. That is what he says.

12 Q. You were also given a draft letter
 13 attached to this letter from Mission Geoscience
 14 who were Alcoa's consultants to the California
 15 Regional Water Quality Control Board; correct?

16 A. Yes.

17 Q. You didn't call, take Mr. Lease up
 18 on his offer to call if you had any questions or
 19 comments, you didn't call him; did you?

20 A. No. I didn't call him. I think I
 21 responded in writing.

22 Q. Yes. We will get to that. You
 23 didn't call him back and talk to him, say, John,
 24 let me talk to you about this, when did these
 25 regulators show up, why are they demanding this

1 SUSAN HALL - CROSS

2 additional supplemental work?

3 A. No, I didn't.

4 Q. You did write back. Let me show
 5 you Alcoa Exhibit 173. Is this your response?

6 A. Yes, it is.

7 Q. You say "We received your letters,
 8 we reviewed the work plan" then the next
 9 paragraph where you get down to the business of
 10 the letter you say "Our position on Alcoa's
 11 voluntarily undertaking risk assessments,
 12 investigations and characterizations with
 13 respect to the Fullerton facility was conveyed
 14 to you" and you refer back to the February 25
 15 letter we looked at a few moments ago; right?

16 A. That's what it says.

17 Q. You go on to say, in fact you quote
 18 there Alcoa -- looking at last sentence of your
 19 quote from your earlier letter "Alcoa can
 20 continue to undertake site assessments and
 21 characterizations" talking about future work;
 22 right, "but until remedial action is undertaken
 23 there is no Fastener Environmental Liabilities
 24 that qualifies for indemnification under 11.6."
 25 Right?

1 SUSAN HALL - CROSS

2 almost nothing about that topic. I just don't
 3 know.

4 What I do know what Mr. Miller came
 5 and testified to under oath. He seemed to be
 6 confident of his position about most things.

7 Q. Let's talk about Fullerton. You
 8 were asked some questions about Fullerton.

9 A. Yes.

10 Q. On April 5 of 2005, that is after
 11 you got to the company; correct?

12 A. Correct.

13 Q. Mr. Lease sent a letter about
 14 proposed scope of work for some soil and
 15 groundwater sampling at Fullerton; correct?

16 A. If you could tell me where the
 17 letter is, I would appreciate it.

18 Q. Let me show you Alcoa Exhibit 59.

19 Do you recognize this as a letter
 20 to you from Mr. Lease dated April 5, 2005?

21 A. Yes, I do.

22 Q. You recognize it refers to a work
 23 plan that describes a proposed scope of work for
 24 supplemental soil and groundwater sampling at
 25 the Fullerton site?

1 SUSAN HALL - CROSS
 2 A. Yes.
 3 Q. You understand that that is not
 4 consistent with Judge Stapleton's preliminary
 5 opinion on summary judgement motion here?
 6 A. I don't know what you're talking
 7 about.
 8 Q. Then I won't ask you about it.
 9 You say "Inasmuch as the work
 10 plan --"
 11 A. Where are we now?
 12 Q. At the bottom of the first page
 13 "Inasmuch as the work plan for supplemental
 14 subsurface investigation is simply another
 15 assessment of the site we reject all claims for
 16 indemnification for the costs relating to the
 17 plan, its implementation and any associated
 18 expenses." Right?
 19 A. Yes.
 20 Q. If you're wrong, if your reading of
 21 the indemnification is incorrect and in fact
 22 investigations or studies to determine whether
 23 environmental remediation work needs to be done
 24 are covered, then your refusal to pay for this
 25 particular study was an error; wouldn't you

1 SUSAN HALL - CROSS
 2 Condition and Buyer shall not unreasonably
 3 refuse to incorporate the Seller's comments."
 4 Now I recognize in this section
 5 that Alcoa has the right to take the lead on
 6 remedial actions.
 7 Q. It doesn't say take the lead; does
 8 it?
 9 A. I'd have to look at the language.
 10 Q. Yes. Why don't you look at the
 11 language. It says "conduct and control all
 12 remedial action and negotiations with any
 13 government entity," etc., etc. toward the top of
 14 section C. Isn't that what it says?
 15 A. Right. That is what it says.
 16 Q. Now, your testimony is
 17 notwithstanding my client's contractual rights
 18 to conduct and control all remedial action and
 19 negotiations with any government entity, that
 20 the language at the end of that same paragraph
 21 that you read about a reasonable opportunity to
 22 comment, in your view means that if we have
 23 given a proposed work plan to a regulator at
 24 their request, no work's been done, we submit it
 25 to you with a letter saying call with any

1 SUSAN HALL - CROSS
 2 agree with that?
 3 A. If all your predicates are true, it
 4 may be in error.
 5 Let me add, I just realized
 6 something. Again, I think as with so many of
 7 these items, you do have the notice issue here.
 8 I believe that the work plan had already been
 9 submitted to the regulators. And we had no
 10 opportunity to participate in that.
 11 Q. I am glad you added that little
 12 qualification. Would you go to the contract,
 13 tab 1 to 11.6 which begins on page 82.
 14 A. I'm there.
 15 Q. Where does it say in 11.6, where is
 16 the actual language that says before Alcoa
 17 submits a proposed work plan to any regulator,
 18 Fairchild must be given a copy and the
 19 opportunity to change it, comment, modify it?
 20 A. Well, it doesn't have those exact
 21 words, but if you look at, page 83 which is the
 22 final sentence in connection with 11.6C, it
 23 says. "The Buyer shall afford the Sellers a
 24 reasonable opportunity to comment on the Buyer's
 25 proposed response to a Fastener Environmental

1 SUSAN HALL - CROSS
 2 you're dealing with remediation at these sites,
 3 which can be very, very costly, and the parties
 4 are supposed to consult and confer and comments
 5 are supposed to be listened to from Fairchild,
 6 that Alcoa shouldn't in good faith go and submit
 7 work plans to the regulators about what they are
 8 going to do without giving Fairchild an
 9 opportunity to be heard on it. That's all I'm
 10 saying.

11 Q. Let me ask my question again.

12 A. Sure.

13 Q. You are not testifying you know as
 14 a matter of fact that Fairchild did not have an
 15 opportunity to comment on this work plan, merely
 16 because Alcoa had given a draft of it to the
 17 regulators; are you?

18 A. No. But what I'm telling you --

19 Q. You answered my question. You
 20 already told me what you wanted to tell me.

21 By the way, my questions earlier
 22 about being able to walk into the plants by
 23 calling John Lease to see what the machine
 24 guarding situation is, that would apply equally
 25 to fall protection, wouldn't you, if you called

1 SUSAN HALL - CROSS
 2 John Lease and said I want to go over and look
 3 at the Torrance facility, you walk through the
 4 facility, you could see whether there is a
 5 railing up on a platform or not; couldn't you?

6 A. Maybe yes, maybe no.

7 Q. Presumably you could walk through
 8 the plant and see what has been put up to
 9 protect against falls or what hasn't been
 10 couldn't you?

11 A. Perhaps. I think you have to know
 12 something about what fall protection involves.
 13 I guess if you have an area where employees are
 14 up on a highly elevated platform and there is no
 15 railing.

16 Q. You can see that?

17 A. You can probably see that, yes.

18 Q. By the way, you have to know
 19 something about it, were you here yesterday -- I
 20 think it was yesterday -- losing track of days,
 21 when Mr. Hodge said he was being paid \$200 an
 22 hour to come from his teaching job in Virginia
 23 to testify here?

24 A. I was here for his testimony on
 25 that.

1 SUSAN HALL - CROSS
 2 Q. Presumably this was a long
 3 experienced environmental lawyer, if the company
 4 was prepared to pay him \$200 an hour to take off
 5 some time from teaching to testify, you don't
 6 have any reason to doubt they could have paid
 7 him 200 bucks an hour to go over to the
 8 facilities, walk around with his years of
 9 expertise, and tell them whether fall protection
 10 provisions were, in his view, adequate or not;
 11 do you?

12 A. I think Mr. Hodge testified he is
 13 not an expert in OSHA compliance. We could have
 14 paid him for that, but it would have been a
 15 waste of money.

16 Q. You could have found somebody and
 17 paid him or her for that for whom it wouldn't be
 18 a waste of money; couldn't you?

19 A. Sure. If those were Fastener
 20 Environmental Liabilities. But they are not.

21 Q. We are on the alternative theory
 22 again, Ms. Hall.

23 A. Sorry.

24 Q. You keep forgetting that. When a
 25 judge asks the question at trial, as a trial

1 SUSAN HALL - CROSS
 2 lawyer I learned long ago you better darn well
 3 try your best to respond to the question.

4 THE ARBITRATOR: You are doing
 5 very well.

6 MR. CHESLER: Thank you, your
 7 Honor. I will tell my wife you said that. She
 8 will be proud of me.

9 Q. Let's talk about Montbrison for
 10 minute. You received a request in February
 11 2005, I think we looked at it maybe, on the same
 12 day you sent your letter saying we are not
 13 paying for any assessments.

14 A. We are not paying for any what?

15 Q. Any assessments.

16 A. At Montbrison?

17 Q. No. No. You sent the general
 18 letter saying assessments are not covered. We
 19 looked at that letter.

20 A. Yes. My February 25 letter.

21 Q. On the very same day Alcoa sent a
 22 letter asking for indemnification for what was
 23 called a detailed risk assessment at Montbrison
 24 about soil and groundwater issues. Do you
 25 recall that?

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1 SUSAN HALL - CROSS
 2 A. Yes.
 3 Q. You rejected that claim, do you
 4 recall that?
 5 A. Could you tell me where it is in
 6 the book.
 7 Q. Yes, it is Exhibit 174.
 8 MR. ZUROFSKY: Tab 22.
 9 MR. CHESLER: Thank you, counsel.
 10 Q. Why don't you turn to tab 22 in
 11 your direct exam book your counsel kindly
 12 pointed out.
 13 A. Okay.
 14 Q. This is your response I want to ask
 15 you if you recall you sent this letter rejecting
 16 the request for indemnification for the detailed
 17 risk assessment relating to soil and groundwater
 18 at Montbrison?
 19 A. Yes.
 20 Q. And you said in this letter that
 21 Alcoa had been previously informed, I am looking
 22 now bottom of the first page.
 23 A. Yes.
 24 Q. "Furthermore Alcoa has been
 25 previously informed that Fairchild reject claims

Page 2876

1 SUSAN HALL - CROSS
 2 Q. I will represent to you that's the
 3 case.
 4 Before you rejected this letter,
 5 this request, I should say, did you consult with
 6 any of the people who had been at Fairchild who
 7 were still there at the corporate level when the
 8 Fasteners facility business were owned to find
 9 out in fact Alcoa was merely asking for
 10 indemnification to remediate a problem which had
 11 been identified on Fairchild's watch by its own
 12 consultants? Did you ask that?
 13 A. No. Because this is not related to
 14 remediation. This is related to an
 15 investigation. This letter at tab 22 that I
 16 wrote to Mr. Lease is specifically addressing
 17 the document that he had sent to me. The
 18 remedial investigations at Montbrison. That's
 19 what I'm addressing. Not addressing -- because
 20 that is what he sent to me as a claim. He
 21 wanted reimbursement for all of these various
 22 studies and investigations.
 23 Q. Let's develop that a little bit.
 24 A. Okay.
 25 Q. You knew by the time you got to the

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1 SUSAN HALL - CROSS
 2 for expenses related to proposal and
 3 assessments." Right?
 4 A. Yes.
 5 Q. In the prior paragraph you took on
 6 the alternative leg, you took the position that
 7 "Alcoa had shown you nothing that evidences
 8 contamination arising out of a release or
 9 threatened release. It can point to no
 10 violations or alleged violations of
 11 Environmental Law prior to closing." Right?
 12 A. That is what it says.
 13 Q. Isn't it true, you may not know
 14 this, but I'll ask you anyway, that back in 1999
 15 ERM -- you know who ERM is?
 16 A. Yes.
 17 Q. ERM did a limited Phase II
 18 investigation for Fairchild at the very same
 19 facility and concluded that it was likely that a
 20 remediation for TPH, that is hydrocarbons and
 21 chlorinated hydrocarbons would have to be
 22 performed at the site.
 23 A. I don't recall that. If you want
 24 to represent to me that's the case, I'll accept
 25 that.

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1 SUSAN HALL - CROSS
 2 company -- I apologize for forgetting, when
 3 exactly did you arrive at Fairchild?
 4 A. I started right around October of
 5 2004.
 6 Q. By October 2004 Fairchild had
 7 received all of the Phase II studies that Alcoa
 8 had conducted after the closing; isn't that
 9 right?
 10 A. Yes. I believe that is correct.
 11 Q. So you had access to the Phase II
 12 studies; correct?
 13 A. Yes.
 14 Q. Before you wrote back telling Alcoa
 15 for these various reasons set forth in
 16 Claimant's Exhibit 456 you weren't going to pay
 17 for it, did you look at the information you
 18 already had from Alcoa in the Phase II studies
 19 about this very facility; yes or no?
 20 A. Yes, I looked at the Phase II. I
 21 cannot tell you exactly when. But, I will tell
 22 you there is a reasonably good chance I did look
 23 at it before writing this letter.
 24 Q. Okay.
 25 A. I can't say with certitude but I

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0850e5e2-96b7-4dca-8b11-f4da6c3f4058

<p style="text-align: right;">Page 2878</p> <p>1 SUSAN HALL - CROSS 2 think there was a reasonably good chance. 3 Q. Let me show you Exhibit 56. Do you 4 recognize this as the Phase II report for the 5 Montbrison facility? 6 A. Yes. 7 Q. You don't have any reason to doubt 8 you had this at Fairchild by the time you 9 arrived and certainly when you wrote this letter 10 in March of 2005 rejecting the claim; correct? 11 A. I definitely had it in 2005. 12 Q. Would you turn to the page that 13 bears the Bates number ending 32274. 14 A. Yes. 15 Q. Do you have that page? 16 A. I do. 17 Q. I would like you to look down at 18 the bottom of the page. Your Honor, are you 19 with me? 20 THE ARBITRATOR: I have it, yes. 21 Q. Bottom of the page it says "In 22 1999, ERM recommended further soil and 23 groundwater investigations to Fairchild to 24 verify the results and to delineate the impacted 25 areas; however, no further studies were done</p>	<p style="text-align: right;">Page 2880</p> <p>1 SUSAN HALL - CROSS 2 a Phase II report that told you three years 3 before the same studies were recommended and 4 never done. You turned them down; right; 5 correct? 6 A. Yes but not because -- 7 Q. I didn't ask you why. I asked you 8 if you accept the chronology that is laid out in 9 words of English in the Phase II which was 10 sitting somewhere in your offices and which you 11 say you think you consulted before you rejected 12 our claim, you admitted all of that. My only 13 question is did you then turn us down? 14 A. That's correct. 15 Q. Thank you. By the way, which 16 column on your chart is this one? 17 MR. ZUROFSKY: There is detailed 18 back up, by the way. 19 MR. CHESLER: I know, since it is 20 the witness' chart. 21 Q. It is tab 2 in the back just if you 22 would like it. 23 A. Sorry? 24 Q. Do you know which column of your 25 chart the Montbrison request is in?</p>
<p style="text-align: right;">Page 2879</p> <p>1 SUSAN HALL - CROSS 2 until this Phase II investigation. According to 3 AFS Montbrison, no other environmental 4 assessments or investigations were completed 5 until the ERM ESA in May 2002." 6 Do you see that? 7 A. I do. 8 Q. Let me see if I can summarize what 9 happened here, see if you agree with me. 10 Fairchild had consultants in 1999 11 who looked into the same problems and who 12 recommended further soil and groundwater 13 investigations to verify results and delineate 14 the impacted areas; correct? 15 A. That is what that says. 16 Q. The Phase II which my client 17 provided to your company reported that and also 18 reported no further studies were done until the 19 current study done by Alcoa; correct? 20 A. That's what it says. 21 Q. So Alcoa then comes back to you 22 with the Phase II studies, provides them to your 23 predecessors before you get there. And now 24 comes in and says we want to do the further 25 studies at that very site. They have given you</p>	<p style="text-align: right;">Page 2881</p> <p>1 SUSAN HALL - CROSS 2 A. I took it out of my binder. 3 Q. It is tab 2. 4 A. I believe it would be largely in 5 the second category, which is the third column. 6 Q. The one that says we ignored your 7 attempts to participate? 8 A. Yes. 9 Q. I want you to just verify for me if 10 your belief in that regard is right. 11 A. That's correct. 12 Q. Let me ask you again, now that you 13 have got the Phase II in front of you, which was 14 available to you at the time, and you see that 15 Fairchild's own consultant recommended the 16 studies, Fairchild then didn't do the studies, 17 we came along, did a Phase II, we gave you the 18 Phase II that says the studies should be done, 19 we then said we want you to pay us for the 20 studies and you said no, I won't pay you for the 21 studies, do you stand by your testimony that the 22 bill for that should be under the category that 23 says we didn't allow you to participate in the 24 process? Yes or no? 25 A. Yes.</p>

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1 SUSAN HALL - CROSS
 2 Q. Thank you.
 3 MR. CHESLER: Just give me a
 4 moment, your Honor.
 5 Q. I want to go back to one other
 6 topic that I failed to cover on the subject of
 7 the definition of Environmental Law.
 8 Would you go back to the contract
 9 in tab 1, please. In particular I want you to
 10 look first at section 1.88. Which appears on
 11 page 12 which has a Bates number of 2738.
 12 A. I'm there.
 13 Q. You see 1.88 is the definition of
 14 Law; right?
 15 A. Yes.
 16 Q. "Shall have the meaning set forth
 17 in section 3.5" correct?
 18 A. Yes.
 19 Q. Let's go to 3.5 which is on
 20 page 29. Do you have that that?
 21 A. I do.
 22 Q. There is a lot of words in there,
 23 lawyers must have been paid by the word for this
 24 agreement. Go down to iv.
 25 A. Yes.

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1 SUSAN HALL - CROSS
 2 modifies, but looking at it in isolation, it is
 3 very broad. It may well and probably would
 4 include regulations and statutes, which OSHA is.
 5 Q. Right. By the way, the definition
 6 of Environmental Law doesn't say that you should
 7 not read the definition of the term Law into the
 8 word law in Environmental Law; does it?
 9 A. Say that again, please.
 10 Q. When you look at the definition of
 11 Environmental Law, one of the two words is the
 12 word law; correct?
 13 A. Let me look at it, if you don't
 14 mind.
 15 Q. 3.24G ii.
 16 A. And the question again.
 17 Q. Yes. First question is, I think it
 18 is kind of self-evident in English, we should
 19 get Mr. Hodge back, he is an English teacher.
 20 Environmental Law consists of two words, one of
 21 which is the word law; correct?
 22 A. That's correct.
 23 Q. In the contract it begins with a
 24 capital L because it is a term of art?
 25 A. That's correct.

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1 SUSAN HALL - CROSS
 2 Q. This is another one of those
 3 sections that set off with separate subparts,
 4 commas then the word "or," the disjunctive;
 5 correct. If you look down at the last one or iv
 6 it says as part of the definition, you can look
 7 at the rest if you like, I am not trying to
 8 sneak anything by you, but I am trying to save
 9 some time.
 10 It says "Violate any order, writ,
 11 injunction, decree, judgement, permit, license,
 12 ordnance, law, common law, statute, code,
 13 standard, requirement, rule or regulation (Law)
 14 applicable to any of the sellers, any of the
 15 Transferred Fasteners Subsidiaries, or any of
 16 the Fasteners Business Assets or the Fasteners
 17 Business."
 18 Then it goes on to say "With such
 19 exceptions in the case of the foregoing
 20 clauses."
 21 Would you agree with me at least on
 22 reading it here OSHA falls under that
 23 definition?
 24 A. I frankly would have to read the
 25 whole thing because I don't know what this

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1 SUSAN HALL - CROSS
 2 Q. There is nothing you know of in
 3 this agreement that says when the word law
 4 appears as part of the definition of
 5 Environmental Law you should apply a definition
 6 of the term law that is different from what the
 7 same agreement says the definition of law is; is
 8 there?
 9 A. You kind of lost me. I think I
 10 generally agree with you.
 11 Q. I am just asking you -- let me make
 12 it simpler. Law is defined term, law is one of
 13 the terms that makes up the term Environmental
 14 Law; correct?
 15 A. Correct.
 16 Q. You would think under contract
 17 principles you learned in your first year of law
 18 school, if law is a defined term whenever you
 19 find it in the agreement you apply the
 20 definition of law under the agreement; right?
 21 A. I agree. But I think subsection B
 22 makes it clear that OSHA regulations in an
 23 environmental context are included. I don't
 24 think that this definition of law, this broad
 25 definition of law changes my interpretation of

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<p style="text-align: right;">Page 2886</p> <p>1 SUSAN HALL - CROSS 2 what Environmental Law is. 3 Q. It may not change your 4 interpretation, but it may change somebody 5 else's. 6 I just want to be sure we're clear 7 that you don't have any basis to dispute reading 8 the contract's own definition of law into the 9 word law, which is part of the term 10 Environmental Law; is that right? 11 A. That's just the way it is written, 12 Mr. Chesler. I couldn't possibly disagree. 13 Q. Thank you. I have two other 14 topics. Torrance. Then I want to go back and 15 ask some questions about that chart the witness 16 spent a got deal of her time on on direct, then 17 I will be done. 18 You testified about this Torrance 19 situation with the regulators, do you recall 20 that, in California, the consent decree? 21 A. Yes. 22 Q. Did you read the Consent Decree? 23 A. Yes, I did. 24 Q. Did you see there is a section, 25 let's look at it, tab 36. Rather than create</p>	<p style="text-align: right;">Page 2888</p> <p>1 SUSAN HALL - CROSS 2 A. I don't know that, that is correct. 3 Are you suggesting that Alcoa submitted the work 4 plan that is referenced in this consent order? 5 Q. Yes. 6 A. Oh, yes that's right because -- 7 Q. Just yes they did? 8 A. What is the question again? 9 Q. Didn't Alcoa submit to Fairchild 10 the work plan to be done as required by the 11 facility investigation, paragraph 6.1 of the 12 decree and didn't you refuse the indemnification 13 claim? 14 A. Yes. Absolutely. 15 Q. Do you know that before Alcoa 16 signed the Consent Decree, it was told by the 17 government regulators in California that either 18 it enter into the decree or the agencies would 19 issue a unilateral order demanding that the site 20 be remediated in a timely fashion? Were you 21 aware of that? 22 A. No, I wasn't. 23 Q. Let's look at Exhibit 167. You see 24 this is a, appears to be email from Charles 25 Stone at the DTSC. You know what that is?</p>
<p style="text-align: right;">Page 2887</p> <p>1 SUSAN HALL - CROSS 2 more paper we'll use your copy. 3 This is the letter that forwarded 4 to you the Consent Agreement for Torrance; 5 correct? 6 A. Yes. 7 Q. Did you read it at the time? 8 A. Yes. 9 Q. Would you turn to the page that 10 ends 151, please. 11 A. Yes. 12 Q. You see on that page there is a 13 heading Facility Investigation, FI? 14 A. Correct. 15 Q. You understand this was a facility 16 investigation which was required by the 17 governmental authorities for Alcoa to perform 18 within 90 days of the effective date of the 19 agreement; right? 20 A. That is what it says in the 21 document. 22 Q. In fact, when Alcoa submitted to 23 you a work plan to perform this very facility 24 investigation you rejected the indemnification 25 claim; correct?</p>	<p style="text-align: right;">Page 2889</p> <p>1 SUSAN HALL - CROSS 2 A. Yes. 3 Q. What is it? 4 A. Department of Toxic Substances 5 Control in California. 6 Q. To Gregory Pfeifer. Do you see 7 that? 8 A. Yes. 9 Q. You see that if you look about a 10 third of the way down the page you will see an 11 email address for Mr. Pfeifer that says at 12 Alcoa.com? 13 A. Yes. 14 Q. This note from Mr. Stone to Mr. 15 Pfeifer dated February 10, 2006. February 10, 16 2006 is before the decree was entered into which 17 was slightly or shortly thereafter in February 18 of the same year; correct? 19 A. Yes. 20 Q. The regulator said to Mr. Pfeifer, 21 "At this date there are two options available to 22 Alcoa. Either enter into the CASC or DTSC --" 23 into the CASC which is an acronym for the 24 decree; correct? 25 A. Yes.</p>

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1 SUSAN HALL - CROSS

2 Q. "Or DTSC will issue an it should be
 3 a unilateral order demanding the site be
 4 remediated in a timely fashion. Should you have
 5 any questions please feel free to contact me."
 6 That is what it says; right?

7 A. That is what it says.

8 Q. As you said before you are aware
 9 the contract says we both conduct and control
 10 all negotiations and interactions with
 11 government agencies related to environmental
 12 conditions; right?

13 A. The agreement says what it says.

14 Q. Notwithstanding this ultimatum from
 15 the DTSC, I take it you stand by your position
 16 you were correct in rejecting all of Alcoa's
 17 indemnification claims, even including the
 18 claims for doing the investigation provided by
 19 the decree; is that correct? Yes or no?

20 A. Yes.

21 Q. That is in your chart, too, the
 22 expenses you incurred in connection with
 23 Torrance as covered in your direct are covered
 24 in one of the columns on your chart?

25 A. I believe they are.

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1 SUSAN HALL - CROSS

2 Q. Which column is that one in?

3 A. Probably column 3. Let me
 4 double-check I believe it is in column 3. There
 5 might be some in column 2.

6 Q. Column 3 is items for which
 7 Fairchild has otherwise been denied its right to
 8 participate; correct?

9 A. Yes.

10 Q. If it is in column 2 it is items
 11 for which we ignored your right to participate?

12 A. Right. It is column 3.

13 Q. You don't quarrel -- quarrel is the
 14 wrong word, you would be quarreling with
 15 yourself. You don't change your view on
 16 changing that item Torrance Consent Decree
 17 related expenses on this chart; right? Your
 18 position remains as it was when you got here
 19 this afternoon on that subject; correct?

20 A. Yes.

21 Q. A few questions about the chart
 22 then we're done. One of the things you did was
 23 you took this first column and said those are
 24 the items that Alcoa admitted that it didn't
 25 give us notice about; right?

1 SUSAN HALL - CROSS

2 A. That's, yes, that is what you gave
 3 us at the first mediation.

4 Q. In fact --

5 A. Arbitration.

6 Q. In fact was the testimony from Mr.
 7 Lease, that those were items for which he could
 8 not point to a particular piece of paper, but in
 9 fact, in his view, he showed the documentation,
 10 they were covered by other notices; isn't that
 11 what he said?

12 A. I was not here for his entire
 13 testimony. I don't know.

14 Q. Well, did you compile this chart or
 15 did the lawyers compile it?

16 A. This was a joint effort.

17 Q. Joint effort. You came in and
 18 swore to it, did you verify all the numbers in
 19 here belonged in here and they were completely
 20 consistent with the evidentiary record here?

21 A. I know and confirmed that columns 1
 22 and 2 represent -- column 1 represents the list
 23 that Alcoa gave us at the first arbitration
 24 hearing. And column 2 represents the asterisked
 25 items that appeared in letters that John Lease

Page 2892

Page 2893

1 SUSAN HALL - CROSS

2 sent to Fairchild in July of 2005 and February
 3 2006. And there is no overlap.

4 Q. So if Mr. Lease testified with
 5 respect to the first column items, that they
 6 were simply items for which there wasn't a
 7 specific piece of paper that referred to it, but
 8 he testified at length about what the notice
 9 was, you didn't review that testimony before you
 10 put or had the lawyers put all those numbers in
 11 column 1; is that correct?

12 A. That's correct. My understanding
 13 was that --

14 Q. You answered my question.

15 THE ARBITRATOR: If she wants to
 16 clarify, I won't cut her off.

17 Q. Your understanding was?

18 A. It was my impression that Alcoa in
 19 its own damage claim, I could be wrong, had
 20 reduced its damage claim by the 2.1 million.

21 Q. You could be wrong; right?

22 A. I could be.

23 Q. It is also your testimony, I take
 24 it -- withdrawn.

25 Let me ask you this: There are

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1 SUSAN HALL - CROSS
 2 machine guarding items in this first column;
 3 aren't there?
 4 A. I'd have to look at the backup.
 5 Q. Look at the backup, for example,
 6 there is one for 14,770 at Simi listed in the
 7 backup. Why don't you look at Simi.
 8 A. In column 1 or 2?
 9 Q. Column 1.
 10 A. Yes.
 11 Q. Page 3. Right?
 12 A. Yes.
 13 Q. So you included this one, if I
 14 understand your testimony, because you believe
 15 that Alcoa said it shouldn't be in the damage
 16 claim, because there was no specific notice for
 17 that; correct?
 18 A. Correct.
 19 Q. You would agree with me, wouldn't
 20 you, you got many, many, many notices for
 21 payment of machine guarding and you refused all
 22 of them because you don't believe machine
 23 guarding is covered; right?
 24 A. That's not the same issue.
 25 Q. Is the answer to my question yes?

1 SUSAN HALL - CROSS
 2 In the City of Industry line, the
 3 Stoughton line and St. Cosme line, each one of
 4 those contains mobile equipment items which when
 5 you add them up are over 90,000. It is late, we
 6 don't need to take the time. If those are in
 7 your backup you wouldn't dispute those?
 8 A. No, I wouldn't.
 9 Q. Would you also agree with me you
 10 got mobile equipment notices for other
 11 facilities, for example Fullerton and Torrance,
 12 and you rejected those claims; correct?
 13 A. Could you show me exactly what
 14 you're referring to.
 15 Q. Sure. For example, let me show you
 16 Exhibit 46, tab 7 in your book.
 17 A. Tab 7 is a letter from Mr. Lease to
 18 Mr. Hodge.
 19 Q. Right. If you look at page 136, the
 20 bottom entry on 136 is for mobile equipment;
 21 isn't it?
 22 A. I am at tab 7?
 23 Q. Tab 7, Fullerton.
 24 MR. ZUROFSKY: Bates stamp 42 at
 25 the end I think is what you're looking for.

1 SUSAN HALL - CROSS
 2 A. Ask it again.
 3 Q. You have rejected all of the claims
 4 that have been submitted to you for machine
 5 guarding at many of the other facilities; isn't
 6 that so?
 7 A. That's correct. Although I don't
 8 think we ever got a Simi Valley bill.
 9 Q. Ms. Hall, under oath if you had
 10 gotten a letter like all the other letters and
 11 this one said give us the \$14,000 for Simi
 12 Valley, you would have handled that one exactly
 13 the same way you handled all the others;
 14 wouldn't you?
 15 A. Yes, I would.
 16 Q. Thank you. You also list in this
 17 first column \$91,000 for mobile equipment
 18 compliance at various facility including
 19 Stoughton?
 20 A. Are you on the big one now?
 21 Q. On the first column, still on the
 22 first column. I am asking you to confirm in the
 23 first column in, for example, the Fullerton
 24 line, the Torrance line -- excuse me, let me
 25 restart.

1 SUSAN HALL - CROSS
 2 Q. I am looking -- my problem, your
 3 Honor, I am looking at different documents from
 4 different books. Let me see, I think I am
 5 looking in the wrong tab 7. I feel better
 6 because young Mr. Slifkin made the same mistake
 7 before. So it is not my age.
 8 I've got it, tab 7 in your book.
 9 A. Okay.
 10 Q. Now I want you to look at the page
 11 that ends with 42.
 12 A. Yes.
 13 Q. Would you agree with me the bottom
 14 entry on that page is 40,000 for mobile
 15 equipment?
 16 A. There is an estimation of \$40,000
 17 for mobile equipment.
 18 Q. Yes. That is a claim you have not
 19 paid; right?
 20 A. No, we have not paid. First of
 21 all, this is not a claim. It is an estimate.
 22 Q. An estimate. Right. Later on you
 23 got a claim and you rejected that?
 24 A. Correct.
 25 Q. My only point here is you listed a

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1 SUSAN HALL - CROSS
 2 mobile equipment item for St. Cosme, for
 3 Stoughton and for City of Industry over \$90,000
 4 in claim 1 – column 1, I should say, because
 5 you didn't get a particular piece of paper for
 6 those. I am simply trying to get you to agree
 7 with me to what I think is a fact, which is you
 8 got claims for precisely the same category of
 9 indemnification from Alcoa with respect to other
 10 facilities and you rejected all of those;
 11 correct?

12 A. Got letters from Alcoa indicating
 13 they thought they were going to incur expenses
 14 for certain activities. The activities, the
 15 health and safety activities in my estimation
 16 are not Fastener Environmental Liabilities. We
 17 were never given any further -- even assuming
 18 they are, there was nothing given to us to let
 19 us know what Alcoa was doing until we got the
 20 bill.

21 Q. Right. We have been down that road
 22 before. I think the answer to my question is
 23 yes, you rejected the other claims for whatever
 24 reasons you thought were good reasons. Their
 25 claims for the same kind of equipment at other

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1 SUSAN HALL - CROSS
 2 facilities. Here you put it in a column because
 3 you didn't get a particular piece of paper for
 4 that facility, even if it was covered, in Mr.
 5 Lease's opinion, for other things?

6 A. The first two columns are Alcoa's
 7 admissions.

8 Q. Your interpretation of Alcoa's
 9 admissions?

10 A. However you like to characterize it
 11 I would regard them as Alcoa's admissions.

12 Q. For example, you said the second
 13 column you took all the asterisk numbers out
 14 except for two which you said were the only two
 15 Mr. Lease identified as mistakes; right?

16 A. Yes. We were trying to be as
 17 accurate as we could.

18 Q. Didn't Mr. Lease say there were
 19 numerous other examples of mistakes, but he only
 20 paused on those in his testimony; you didn't
 21 read this?

22 A. I did not read his testimony, but I
 23 was here for part of it. I do not recall. He
 24 is the one that sent us the document. He
 25 asterisked the items that he admitted in his

Page 2900

1 SUSAN HALL - CROSS
 2 cover letters Fairchild had not been given
 3 notice. This is just a compilation of what
 4 Alcoa told us.
 5 Q. Ms. Hall, I don't want to prolong
 6 this. I have to correct you about that. My
 7 question was about what he said in that chair at
 8 this proceeding.

9 THE ARBITRATOR: Yesterday?
 10 MR. CHESLER: No, in the first
 11 phase, your Honor, Mr. Lease who was in our case
 12 back in January.

13 Q. My point is you didn't go back and
 14 look at his testimony. I am telling you he
 15 testified in fact that those were simply two
 16 examples and there were others. You are saying
 17 you don't recall that; correct?

18 A. Okay. I am also saying something
 19 as imprecise as there were others wouldn't allow
 20 us to do anything other than what we did here.
 21 What we did here is we took the numbers that
 22 Alcoa gave us.

23 Q. Okay.

24 A. We can agree to disagree.

25 Q. We can and we do.

Page 2901

1 SUSAN HALL - CROSS
 2 A. On whether this is an admission or
 3 not.
 4 Q. With respect to that second column,
 5 isn't it also the case that, let's take one
 6 other example in that column, you listed for
 7 Toulouse, look at your back up for that column,
 8 look at Toulouse.

9 A. You mean the large second column?

10 Q. No. I mean the second column under
 11 your first category.

12 A. Okay. Let me find it, please.

13 Q. Page 6?

14 A. Yes, I am there.

15 Q. You list 444,900 for machine
 16 guarding compliance at Toulouse. All of that is
 17 in that second half of your first category;
 18 correct? Within the Toulouse number which
 19 totals -- in fact it is almost all of the
 20 511,000; isn't it?

21 A. Yes.

22 Q. Isn't it a fact that you received,
 23 or Fairchild received a notification of machine
 24 guarding expenses at Toulouse way back in June
 25 of 2003 before any work was done, before any of

96 (Pages 2898 to 2901)

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Page 2902

1 SUSAN HALL - CROSS
 2 that money was spent; yes or no?
 3 A. No.
 4 Q. No?
 5 A. No. What Fairchild received were
 6 estimates.
 7 Q. Isn't it a fact you received an
 8 estimate for machine guarding work before any of
 9 that work was done?
 10 A. That's correct.
 11 Q. We been down the road before of
 12 whether you had inspection rights, you could
 13 look at the machines, we don't have to repeat
 14 that. You recall that testimony?
 15 A. Yes. We also been down the road we
 16 requested additional information and never got
 17 it.
 18 Q. Yes, I heard that.
 19 THE ARBITRATOR: Seems like we
 20 been down both roads.
 21 MR. CHESLER: I apologize, your
 22 Honor, I am trying to wrap this.
 23 THE ARBITRATOR: I know you are.
 24 Q. Also included in this category,
 25 again under second column of your first

Page 2903

1 SUSAN HALL - CROSS
 2 category, are expenses that were incurred after
 3 Mr. Lease's letter with the asterisk came;
 4 right?
 5 A. I'm not sure.
 6 Q. You're not sure. All right.
 7 A. In the second column?
 8 Q. Yes.
 9 A. My understanding the second
 10 column -
 11 Q. Let me try to ask you a question I
 12 think will clarify. Why don't you look and see
 13 whether under Fullerton there is an item for
 14 154,218 for combustion safety.
 15 A. That's correct.
 16 Q. Isn't it the case, Ms. Hall, that
 17 you received a letter from John Lease back in
 18 July of 2005, the letter with the asterisk on
 19 it, and the amounts that had been spent on that
 20 item as of that time was only \$34,740? If you
 21 need to look at that, tab 3.
 22 A. What item is it?
 23 Q. Tab 3, page 2 of 6, under Fullerton
 24 about three items up from the end of Fullerton
 25 section.

Page 2904

1 SUSAN HALL - CROSS
 2 A. Right. 34,000 you're talking
 3 about?
 4 Q. Yes. Let's get the record clear.
 5 You put in this column you said everything that
 6 was subject to Mr. Lease's asterisk; right?
 7 A. That's right.
 8 Q. The asterisk letter told you my
 9 client had spent 34,000 and change on this item
 10 as of the time he gave you the notice about it,
 11 which you say was late; right?
 12 A. Correct.
 13 Q. Since that time approximately
 14 \$120,000 has been spent on that after you got
 15 Mr. Lease's notice which you say is late;
 16 correct?
 17 A. Apparently.
 18 Q. You took all of that money and put
 19 it into this chart and said we don't owe it to
 20 you because Mr. Lease put an asterisk on a
 21 letter back in July of 2005; right?
 22 A. He put asterisk on the July letter
 23 and also in the February 2006 letter.
 24 Q. Ms. Hall, stay with me. He told
 25 you about combustion safety work at Fullerton

Page 2905

1 SUSAN HALL - CROSS
 2 back in July of '05. He put an asterisk on it
 3 to indicate for some reason they hadn't sent you
 4 notice before and told you they spent 34,000;
 5 right?
 6 A. That is what appears here.
 7 Q. Now they spent over 150,000 almost
 8 all of which was spent after you got that notice
 9 and you put the entire amount on to your summary
 10 chart; right?
 11 A. We put onto our summary chart the
 12 items that Mr. Lease had asterisked. He
 13 asterisked that item. Yes. Are you suggesting
 14 we should have gone through six pages - never
 15 mind. I am not asking the questions.
 16 Q. I am asking you when you come to
 17 court and swear to things under oath you have to
 18 be right. That is what I am suggesting.
 19 A. I disagree. I have to be truthful.
 20 Q. Excuse me. I'm asking you whether
 21 or not you included on this chart approximately
 22 \$120,000 of expense that Alcoa incurred after
 23 Mr. Lease sent you notice of this with an
 24 asterisk on it. You ought to be able to answer
 25 that yes or no.

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Page 2906

1 SUSAN HALL - CROSS
 2 A. Yes.
 3 Q. Thank you. Now let's go to the
 4 next column, column 2. This entire column, I
 5 believe you said consists of three things. The
 6 Temple Avenue pump and treat item, right,
 7 investigations or assessments and work that was
 8 done on items that were the subject of the
 9 so-called gap letters. Do you remember saying
 10 that on direct?
 11 A. Yes. These are the gap letters and
 12 these are follow-up investigations that had been
 13 done pursuant to the Phase II reports.
 14 Q. And Temple pump and treat; right?
 15 A. I think so.
 16 Q. Temple pump and treat, that is one
 17 where Fairchild had used a consultant named
 18 EnviroSolve to do the work when it owned the
 19 facility; right?
 20 A. I'm sorry.
 21 Q. Fairchild had used a consultant
 22 named EnviroSolve to do the pump and treat work
 23 at Temple when they owned the facility?
 24 A. That's correct. Yes.
 25 Q. At least for the whole first year

Page 2908

1 SUSAN HALL - CROSS
 2 regulatory limits would have been known to the
 3 regulators on Fairchild's watch rather than on
 4 our watch; do you recall that?
 5 A. I don't recall the testimony coming
 6 out that way. But that's the implication, yes.
 7 Q. I take it -- certainly Mr. Miller
 8 said this -- I take it you would agree, if that
 9 fact had become known to the regulators on your
 10 watch, there were lies being told to the
 11 regulators and waste water facility was above
 12 its limits then Fairchild would have paid to fix
 13 that; right?
 14 A. I can't really speculate on what
 15 would have happened. I know Fairchild would
 16 have done the right thing.
 17 Q. When we tried to do the right thing
 18 you turned down the request; correct?
 19 A. You say you tried to do the right
 20 thing, what are you talking about?
 21 Q. Replace the waste water treatment
 22 so that it complied with the law, stop lying to
 23 the regulators; would you agree those are the
 24 right things to do?
 25 A. I would agree that stopping lying

Page 2907

1 SUSAN HALL - CROSS
 2 or so of Alcoa's ownership of the facility we
 3 used the same consultant you used; didn't we?
 4 A. I think it was for a few months,
 5 but yes, you did. Alcoa did use EnviroSolve for
 6 the first few months.
 7 Q. You rejected the claims for
 8 EnviroSolve's bills to us, your consultant
 9 running the same facility at the Temple facility
 10 as well as the claims once the other consultants
 11 came in; didn't you?
 12 A. I did.
 13 Q. This column also includes the bill
 14 for the waste water treatment at St. Cosme;
 15 doesn't it? This second major column?
 16 A. Yes, it does.
 17 Q. That is the facility where there
 18 has been testimony here that Fairchild, when it
 19 owned it, kept two sets of books and lied to the
 20 regulators, do you recall that testimony?
 21 A. I do.
 22 Q. You recall the testimony about how
 23 if in fact they hadn't kept the real waste water
 24 discharge levels secret from the regulators,
 25 that the fact they were in excess of the

Page 2909

1 SUSAN HALL - CROSS
 2 to the regulators, if that's what happened, was
 3 the right thing to do.
 4 In terms of the waste water
 5 treatment plant, again, that to me would have
 6 been a legitimate cost, proper Fastener
 7 Environmental Liabilities had we participated in
 8 the fix.
 9 Q. Two more questions then I'm done.
 10 I am on the third and final category of your
 11 chart.
 12 A. Yes.
 13 Q. There are loads are examples your
 14 Honor, if we had an infinite period of time we
 15 can do this. I really --
 16 THE ARBITRATOR: I am available on
 17 Friday, you know. I think we are going to be
 18 worn out by Friday.
 19 MR. CHESLER: There is at least
 20 one thing on which I hardly agree with my
 21 colleague, Mr. Zurofsky, that is to try to get
 22 done by tomorrow night.
 23 THE ARBITRATOR: Right.
 24 Q. Ms. Hall, this third category, it
 25 includes among other things expenditure of

98 (Pages 2906 to 2909)

Page 2910

1 SUSAN HALL - CROSS
 2 113,000 for septic system field at Stoughton,
 3 Mass; does it?
 4 A. Yes.
 5 Q. It also includes 74,000 for
 6 degreaser at Fullerton; does it?
 7 A. I have to look at the background.
 8 Q. If it is in the backup you don't
 9 dispute it?
 10 A. Right.
 11 Q. Isn't it the case both of those
 12 items were placed by Fairchild in its letter to
 13 its own auditors as potential liabilities it
 14 felt it needed to disclose to the auditors?
 15 A. I believe that's correct.
 16 Q. Let me make sure we got this clear,
 17 Fairchild thought these were sufficiently
 18 probable liabilities and estimable liabilities
 19 so under the financial accounting rules they
 20 were obligated to notify their auditors of them
 21 and when we came in and asked for reimbursement
 22 for precisely those items you turned it down;
 23 isn't that true, yes or no?
 24 A. Yes, that's true.
 25 Q. Last question. You testified it

Page 2912

1 SUSAN HALL - CROSS
 2 comply with its own standards; do you recall
 3 that?
 4 A. Yes.
 5 Q. Tell me how Alcoa's standards
 6 compare to the regulatory standards in place in
 7 those facilities.
 8 A. I would have no idea without
 9 looking at them side by side.
 10 Q. You have no idea; right?
 11 A. I would have no idea without
 12 looking at them side by side. There could be
 13 overlap. You can have an Alcoa standard that
 14 was the same as, for example, an OSHA standard
 15 on air emissions in the workplace. Then that
 16 would qualify. Just the word Alcoa standards,
 17 there is nothing in this contract that requires
 18 Fairchild to indemnify Alcoa for its own
 19 standards, which I understand are higher in many
 20 instances than what is required.
 21 Q. How do you know that? You just said
 22 you have no idea how they compare; didn't you?
 23 A. I said without looking at a
 24 specific standard relating to a specific item.
 25 I am talking in general terms right now.

Page 2911

1 SUSAN HALL - CROSS
 2 was your understanding that Alcoa had its own
 3 compliance directives. I objected on foundation
 4 ground. Do you remember that?
 5 A. Yes.
 6 Q. You said oh, well, I read these
 7 documents. It is clear to me they have their
 8 own compliance directives. You didn't feel it
 9 was appropriate to pay for compliance with
 10 Alcoa's rules as opposed to legal rules?
 11 MR. ZUROFSKY: There are two
 12 questions, I don't know if she agreed to the
 13 first question.
 14 Q. I will break it out. Do you recall
 15 testifying from reading documents you concluded
 16 that Alcoa had its own set of directives,
 17 compliance directives?
 18 A. I saw those terms right in invoices
 19 which Alcoa sent us that said work was done to
 20 achieve Alcoa's compliance standards.
 21 Q. You were asked a question on
 22 direct-examination, the specifics of which I
 23 don't recall, but do you recall your answer
 24 which was you did not think it was appropriate
 25 to reimburse Alcoa for expenses incurred to

Page 2913

1 SUSAN HALL - REDIRECT
 2 MR. CHESLER: I'm done.
 3 THE ARBITRATOR: Thank you very
 4 much, counselor.
 5 MR. ZUROFSKY: I will be very
 6 quick. We will get done in very brief time.
 7 RE-DIRECT EXAMINATION BY MR. ZUROFSKY:
 8 Q. Ms. Hall, just going to clear up a
 9 couple things. I know it is late, it has been a
 10 long day.
 11 The first question Mr. Chesler
 12 asked you was whether or not Fairchild has paid
 13 any particular claims under 11.6A. Do you
 14 recall that, or second question he asked?
 15 A. 11.6A?
 16 Q. Yes, of the Indemnification
 17 Agreement.
 18 A. Yes.
 19 Q. You said no; right?
 20 A. That's right.
 21 Q. Has Fairchild assumed any
 22 liabilities in connection with environmental
 23 contamination matters at the facilities that are
 24 at issue in this case?
 25 A. Yes.

99 (Pages 2910 to 2913,

<p style="text-align: right;">Page 2914</p> <p>1 SUSAN HALL - REDIRECT 2 Q. Which ones? 3 A. Fullerton. 4 Q. What did you assume there? 5 A. The Orange County water district filed a suit against Alcoa and Fairchild. Alcoa tendered the defense to Fairchild about a year and a half ago. We have assumed the defense costs since that time. 10 Q. Just for the record, the letter 11 when you accepted those costs found in your book 12 at tab 4, I believe it is. Is that the letter, 13 Claimant's Exhibit 434? 14 A. Yes. 15 Q. In that case Fairchild has been 16 paying directly the legal bills directly; right? 17 A. Paying it directly over \$100,000 at 18 this point. 19 Q. If that claim had fallen under 20 11.6A, if you accepted it under 11.6A who would 21 have been paying those bills and been 22 responsible for those bills to date? 23 A. They would have been deducted from 24 the reserve. There wouldn't have been any out 25 of pocket on Fairchild's part.</p>	<p style="text-align: right;">Page 2916</p> <p>1 SUSAN HALL - REDIRECT 2 Q. Two questions on that. Fairchild 3 filed a brief in connection with the Alcoa 4 summary judgement motion in this case. Do you 5 recall that? 6 A. Yes. 7 Q. Do you recall in that brief 8 Fairchild gave some examples of OSHA laws that 9 had environmental health and safety aspects, do 10 you recall that? 11 A. Vaguely. 12 Q. One of the things you testified on 13 direct was about air emissions; do you recall? 14 A. That I'm aware of. That is one of 15 the ones I am personally aware of. 16 Q. Turn to tab 5 in your book. I am 17 not going to go through the whole list of these. 18 I want to give one example to show. Do you know 19 what confined space compliance is, Ms. Hall? 20 A. Yes. 21 Q. What is the issue with confined 22 space? 23 A. The issue with confined space is 24 that a worker, if a worker is going to be in a 25 confined space there have to be certain safety</p>
<p style="text-align: right;">Page 2915</p> <p>1 SUSAN HALL - REDIRECT 2 Q. Alcoa would pay? 3 A. It would come out of a reserve. 4 Q. Which Alcoa would pay, the cash out 5 to the lawyers? 6 A. They would have come out of the 7 reserve. 8 Q. You may have the reserve and 9 escrow - we will clean it up in briefing 10 because we are almost done for day. 11 A. It would depend -- never mind. 12 Q. That's fine. Second thing Mr. 13 Chesler asked you about, you remember he talked 14 about Mr. Miller yesterday when he asked Mr. 15 Miller about a hypothetical situation about fall 16 protection. Do you recall that? 17 A. Yes. 18 Q. He asked you about whether or not 19 there were any health and safety claims you felt 20 they made that are environmental health and 21 safety claims. Do you recall that? 22 A. Do I recall his asking Mr. Miller 23 that? 24 Q. Yes - no, asking you that. 25 A. Yes.</p>	<p style="text-align: right;">Page 2917</p> <p>1 SUSAN HALL - REDIRECT 2 considerations. That's generally it. 3 Q. Is part of the regulation as you 4 understand it because they can be exposed to 5 toxins in the air? 6 A. Toxic air. 7 Q. Things like that? 8 A. Yes. 9 Q. Looking at the chart we were 10 talking about on 1 of 6, there are other 11 examples, I will do one. 12 THE ARBITRATOR: What tab? 13 MR. ZUROFSKY: Sorry, your Honor. 14 Tab 5. Claims, master claims chart. 15 Q. Page 1 of 6. 16 A. I'm there. 17 Q. Just do one of these. Item 9 18 confined space compliance. 19 A. Yes. 20 Q. In your view that's relating to 21 potentially an environmental health and safety 22 issue as you understand it. 23 MR. CHESLER: Counsel, I can't 24 find where you're talking. I am behind tab 5 in 25 your book.</p>

100 (Pages 2914 to 2917)

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1 SUSAN HALL - REDIRECT

2 MR. ZUROFSKY: Yes. Page 1 of 6
 3 on the chart. Master chart.

4 MR. CHESLER: Thank you.

5 MR. ZUROFSKY: Confined space
 6 compliance.

7 Q. Do you see that?

8 A. I do.

9 Q. Is that the type of thing that
 10 could involve environmental health and safety
 11 issues?

12 A. Yes, it could.

13 Q. Do you believe there are other
 14 examples of that type of issue?

15 A. On this chart?

16 Q. I am not going to ask you to go
 17 through it.

18 A. There would be other examples.

19 Q. Next item I want to cover is you
 20 remember Mr. Chesler spent some time with you
 21 talking about why you didn't pick up the phone
 22 and call Mr. Lease and say I want to visit the
 23 facilities; do you remember that?

24 A. Yes.

25 Q. What is another way, is writing

1 SUSAN HALL - REDIRECT

2 Q. He did not say, did he not no, no,
 3 no I won't send you the documents just come on
 4 down and take a look at the machines?

5 A. That is not what he said. He said
 6 we will provide you with the information you're
 7 seeking.

8 Q. In your view is that an effort by
 9 Fairchild to participate in the process, to
 10 request that information and review it?

11 A. Absolutely.

12 Q. Next item. Mr. Chesler spent some
 13 time with you talking about Torrance Consent
 14 Agreement. He showed you Exhibit 167. That
 15 email from the DTSC. Do you recall he called it
 16 the ultimatum.

17 A. Yes. I can't find it, but I
 18 remember it.

19 Q. It is February 10.

20 A. Here it is.

21 Q. The email is dated February 10. Do
 22 you see that?

23 A. Right.

24 Q. You make reference, we can pull it
 25 up if you want in your letters to when you saw

1 SUSAN HALL - REDIRECT

2 another way to communicate with people than
 3 picking up the phone?

4 A. Yes. That is what I did.

5 Q. Mr. Miller did it too; did he not?

6 A. Yes. Mr. Miller did, Mr. Beckford
 7 did. I did.

8 Q. What was Alcoa's response when Mr.
 9 Miller said I do want to find out more
 10 information about the machine guarding issues?

11 A. Alcoa's response, which came from
 12 their lawyer, was we are going to keep you fully
 13 apprised as work plans and scope of work and
 14 items like that are generated we will give them
 15 to you. The letter is in here if you want more
 16 information.

17 Q. I think we all know which one we
 18 are talking about. Alcoa was doing the work,
 19 they were actually looking at the machines and
 20 making assessments of them?

21 A. That is my understanding.

22 Q. Was it your understanding Alcoa
 23 promised to provide the results of that work to
 24 Fairchild in response to Fairchild's request?

25 A. That is what Mr. Harvey said.

1 SUSAN HALL - REDIRECT

2 the first reference to a draft Consent
 3 Agreement. Do you recall what date that was?

4 A. The letter is in here. To give you
 5 the background on this, I knew by some time in
 6 early 2006 that Alcoa had been discussing the
 7 terms of a consent order with the DTSC
 8 unbeknownst to us. Last time we knew about
 9 Torrance they were dealing with the regional
 10 board. Now they are dealing with the DTSC.

11 Essentially at this point in time,
 12 February 10, the terms of the Consent Agreement
 13 had already been agreed upon. I never seen this
 14 before. But my reading of this is the DTSC is
 15 saying, look, sign it or we'll issue a
 16 unilateral order.

17 Q. I just want to make sure we have
 18 it, we can look, is the date September 19, 2005
 19 sound about right for you for the draft?

20 A. Yes. That's right.

21 Q. Is it your understanding Alcoa was
 22 negotiating about this Consent Agreement for
 23 five months before this email?

24 A. Absolutely.

25 Q. In your experience negotiating

Page 2922

1 SUSAN HALL - REDIRECT
 2 consent agreements, the terms of those
 3 agreements can in fact be negotiated?
 4 A. That is exactly what it means you
 5 negotiate them. It is a negotiated agreement.
 6 As opposed to the regulatory agency just
 7 dictating what you will do.
 8 Q. Mr. Chesler also asked you some
 9 questions about the chart. He asked a couple
 10 items about why you put certain asterisk items
 11 in column 1B. Do you recall that?
 12 A. Yes.
 13 Q. He showed you the Toulouse machine
 14 guarding item. Do you recall that?
 15 A. Right.
 16 Q. Is that an asterisked item on Mr.
 17 Lease's chart?
 18 A. Yes.
 19 Q. Have you ever heard Mr. Lease say
 20 or testify or anyone represent to you he said
 21 you know what, that shouldn't have been an
 22 asterisked item, I gave enough notice and I gave
 23 proposed response to that?
 24 A. No.
 25 Q. Next, Mr. Chesler pointed you to

Page 2924

1 SUSAN HALL - REDIRECT
 2 money; right?
 3 A. That's correct.
 4 Q. One other. Do you remember Mr.
 5 Chesler also asked you a series of questions
 6 about how you had gotten notice say of a
 7 condition of machine guarding at the Fullerton
 8 facility but yet you placed the Simi Valley
 9 facility in column 1A. Do you recall that?
 10 A. Vaguely.
 11 Q. Do you recall the questions about
 12 how machine guarding, you had notice of machine
 13 guarding issues, he claims at some facilities
 14 but yet you rejected at the other facilities.
 15 Do you recall that?
 16 A. Yes.
 17 Q. Does the letter that tells you, in
 18 your view, a letter that says we think there is
 19 a machine guarding problem at Fullerton tell you
 20 they also think there is a machine guarding
 21 problem at Simi Valley?
 22 A. No.
 23 Q. Did you ever receive a letter that
 24 said we have machine guarding problem at Simi
 25 Valley?

Page 2923

1 SUSAN HALL - REDIRECT
 2 the Fullerton asterisk for combustion safety.
 3 This is the one about where the item was listed
 4 as 35 -- I forget the number, something
 5 thousand, and more money was spent after the
 6 asterisk letter. Do you recall that?
 7 A. Yes.
 8 Q. The asterisk letter we referred to
 9 which is the July asterisk letter, in connection
 10 with what was it sent to you?
 11 A. In connection with the impending
 12 mediation.
 13 Q. It was a notice of claim of money
 14 already spent; right?
 15 A. Yes.
 16 Q. Did Mr. Lease ever say to you, did
 17 he ever send you in report saying here is what
 18 we are doing on combustion safety here is what
 19 we propose going forward?
 20 A. No. Absolutely not.
 21 Q. You got the item there for 30
 22 something thousand; right?
 23 A. Correct.
 24 Q. The next thing you heard from Mr.
 25 Lease on combustion safety was a bill for more

Page 2925

1 SUSAN HALL - REDIRECT
 2 A. No. There was a letter that
 3 addressed machine guarding at one point at ten
 4 sites, something like ten sites, five or so of
 5 which were brand new.
 6 Q. After that, that letter of course
 7 you testified on direct-examination was received
 8 after expenses had already been incurred at
 9 those sites?
 10 A. Yes.
 11 Q. To finish the last question on
 12 this, in fact the fact you got a letter saying
 13 we might be doing something at Fullerton but not
 14 one at Simi Valley, does that suggest to you
 15 perhaps there was not a problem at Simi Valley?
 16 MR. CHESLER: Your Honor, even
 17 after five o'clock, I think that is leading.
 18 MR. ZUROFSKY: I will withdraw it.
 19 A. It suggests to me --
 20 MR. CHESLER: It was withdrawn.
 21 A. Thank you.
 22 MR. ZUROFSKY: If you want to ask
 23 the judge to give direction to the witness, but
 24 don't yell at the witness.
 25 MR. CHESLER: I didn't yell at the

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1 SUSAN HALL - RECROSS
 2 witness.
 3 MR. ZUROFSKY: I'm done.
 4 RE-CROSS EXAMINATION BY MR. CHESLER:
 5 Q. Two questions. You pointed to
 6 confined space compliance --
 7 THE ARBITRATOR: What is your
 8 second question?
 9 MR. CHESLER: You're right, your
 10 Honor.
 11 Q. You pointed to confined space
 12 compliance as a type of workplace health and
 13 safety that you say could fit within your
 14 definition under the agreement; correct?
 15 A. That's what I testified.
 16 Q. In fact you rejected all of our
 17 confined space compliance request for
 18 indemnification; isn't that true? Yes or no?
 19 A. Yes.
 20 Q. Last question, in the letter from
 21 July of 2005 that Mr. Lease sent you where he
 22 gave you the list of items, some of which were
 23 asterisked --
 24 A. Yes.
 25 Q. -- he said please contact me if

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1 C E R T I F I C A T E
 2 STATE OF NEW YORK)
 3 : ss.
 4 COUNTY OF NEW YORK)
 5 I, TAMMEY M. PASTOR, a Registered
 6 Professional Reporter, Certified LiveNote
 7 Reporter and Notary Public within and for the
 8 State of New York, do hereby certify that the
 9 foregoing proceedings were taken before me on
 10 February 28, 2007;
 11 That the within transcript is a true
 12 record of said proceedings;
 13 That I am not connected by blood or
 14 marriage with any of the parties herein nor
 15 interested directly or indirectly in the matter
 16 in controversy, nor am I in the employ of the
 17 counsel.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand this _____ day of _____,
 20 2007.
 21
 22
 23
 24
 25 TAMMEY M. PASTOR, RPR, CLR

Page 2927

1 SUSAN HALL - RECROSS
 2 Fairchild would like further information
 3 regarding any environmental liability. You
 4 never contacted him; did you?
 5 A. No.
 6 MR. CHESLER: Thank you. No
 7 further questions.
 8 THE ARBITRATOR: See you all
 9 tomorrow at 9:15.
 10 (Time Noted: 6:17 p.m.)
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